LAWS.

OF THE

TERRITORY OF MONTANA

PASSED AT THE

THIRD SESSION OF THE LEGISLATURE

Beginning November 5, 1866, and Ending December 15, 1866.

HELENA CITY, M. T.:
WILKINSON AND RONAN, PRINTERS.
1866.

HeinOnline -- 1866 1 1866

PUBLISHED BY AUTHORITY OF THE SECRETARY.

HeinOnline -- 1866 2 1866

LAWS OF MONTANA TERRITORY:

PASSED BY THE

THIRD SESSION OF THE LEGISLATURE.

CHAPTER I.

AN ACT---Concerning Corporations.

Be it enacted by the Legislative Assembly of the Territory of Montana, as follows:

SECTION 1. Corporations for manufacturing, mining, mechanical or agricultural purposes, for constructing telegraph lines, for making roads, for conveying water and constructing flumes, or for the purpose of engaging in any species of trade or commerce, may be formed according to the provisions of this act: Such corporations and members thereof being subject to the conditions and liabilities hereby imposed and to none other: *Provided*, That nothing in this section shall be so construed as to authorize a company formed under it to own or hold possession of more than fourteen hundred and forty acres of land, or to authorize an individual member of such company or association, in his corporate capacity, to hold, own or possess a number of acres to exceed eighty, and, *provided, further*, That no corporation formed for agricultural purposes shall be allowed to hold any mineral lands under the provisions of this act.

Sec. 2. Any three or more persons who may desire to form a company, for one or more of the purposes specified in the preceding section, may make, sign and acknowledge before some officer, competent to take the acknowledgment of deeds, and file in the office of the county clerk of the county in which the principal place of business of the company is intended to be located, and a certified copy thereof, under the hand of the clerk and seal of said county, in the office of the Secretary of the Territory, a certificate in writing, in which shall be stated the corporate name of the company, the object for which the company shall be formed, the amount of its capital stock, the time of its existence, not to exceed twenty years, the number of shares of which the stock shall consist, the number of trustees and their names, who shall manage the concerns of the company for the first three months, and the name of the city or town

HeinOnline -- 1866 3 1866

and county in which the principal place of business of the company is to be located.

Sec. 3. A copy of any certificate of incorporation filed in pursuance of this act and certified by the county clerk, in the county in which it is filed, or his deputy, or by the Secretary of the Territory, shall be received in all courts and places, as presumptive evidence of the facts therein stated.

Sec 4. When the certificate shall have been filed, the persons who shall have signed and acknowledged the same, and their successors shall be a body politic and corporate, in fact and in name, by the name stated in the certificate, and by their corporate name, shall have succession for the period limited, and power: *first*—To sue and be sued in any court. *Second*—To make and use a common seal and alter the same at pleasure. *Third*—To purchase, hold, sell and convey real and personal estate, as the purposes of the corporation shall require. *Fourth*—To appoint such officers, agents, and servants as the business of the corporation may require, to define their powers, prescribe their duties and fix their compensation. *Fifth*—to require of them such security as may be thought proper for the fulfilment of their duties, and to remove them at will, except that no trustee shall be removed from office unless by a vote of two-thirds of the whole number of trustees, or by a vote of a majority of the trustees upon a written request signed by stockholders legally representing two-thirds of the whole stock. *Sixth*—To make by-laws not inconsistent with the laws of this Territory, or of the United States, for the organization of the company, the management of its property, its regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company.

Sec 5. The corporate powers of the corporation shall be exercised by a board of not less than three trustees, who shall be stockholders in the company, and a majority of them citizens of the United States, and residents of this Territory, and who shall after the expiration of the term of the trustees first elected, be annually elected by stockholders at such time and place and upon such notice and in such mode as shall be directed by the by-laws of the company, but all elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to as many votes as he owns shares of stock, and the persons recieving the greatest number of votes, shall be and act as trustees. When any vacancy shall happen among the trustees by death, resignation or otherwise, it shall be filled for the remainder of the year in such manner as may be provided by the by-laws of the company.

Sec. 6. If it shall happen at any time that an election of trustees shall not be made on the day designated by the by laws of the company, the corporation shall not, for that reason, be dissolved, but it shall be lawful on any other day to hold an election for trustees in such manner as shall be provided for by the by-laws of the company, and all acts of trustees shall be valid and binding upon the company until successors shall be elected.

Sec. 7 A majority of the whole number of trustees shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act.

HeinOnline -- 1866 4 1866

Sec. 8. The first meeting of the trustees shall be called by a notice signed by one or more of the persons named trustees in the certificate, setting forth the time and place of the meeting, which notice shall be either delivered personally to each trustee, or published at least ten days in some newspaper of the county in which is the principal place of business of the corporation, or, if no newspaper be published in the county, then in some newspaper published nearest thereto.

Sec 9 The stock of the company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by laws of the company: but no transfer shall be valid except between the parties thereto, until the same shall have been so entered on the books of the company as to show the names of the parties by and to whom transferred, the number and designation of the same and the date of the transfer.

Sec 10. The trustees shall have power to call in and demand from the stockholders the sums by them subscribed, at such times and in such payments or installments as they may deem proper; notice of each assessment shall be given to the stockholders personally, or shall be published once a week, for at least four weeks in some newspaper published at the place designated as the principal place of business of the corporation, or if none is published there, in some newspaper published nearest to such place. If, after such notice shall have been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, so many of such shares may be sold as will be necessary for the payment of the assessment on all the shares held by him The sale of said shares shall be made as prescribed by the by-laws of the company; provided, that no sale shall be made except at public auction to the highest bidder, after a notice of thirty days, published as above directed in this section, and that at such sale the person who will agree to pay the assessment so due, together with the expense of advertisement and the other expenses of sale, for the smallest number of whole shares shall be deemed the highest bidder.

Sec. 11. Whenever any stock is held by any person as executor, administrator, guardian or trustee, he shall represent such stock at all meetings of the company and vote accordingly as a stockholder.

Sec. 12. Any stockholder may pledge his stock by a delivery of his certificate or other evidence of his interest, but may nevertheless represent the same at all meetings and vote accordingly as a stockholder.

Sec. 13. It shall not be lawful for the trustees to make any dividend except from the surplus profits arising from the business of the corporation, nor to divide, withdraw, or in any way pay to the stockholders or any of them, any part of the capital stock of the company, nor to reduce the capital stock unless in the manner prescribed in this act, and in case of any violation of the provisions of this section, the trustees under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large in the minutes of the board of trustees at the time, or were not present when the same did happen, shall in their individual and private capacity, be jointly and severally liable to the corporation and the creditors thereof in the event of its dissolution, to the full amount so divided, withdrawn, paid out or re-

HeinOnline -- 1866 5 1866

duced; provided, that this section shall not be so construed as to prevent a division and distribution of the capital stock of the company which shall remain after the payment of all its debts, upon the dissolution of the corporation or the extinction of its charter.

Sec. 14. The total amount of the debt of the corporation shall not at any time exceed the amount of the capital stock actually paid in, and in case of any excess, the trustees under whose administration the same may have happened, except those who have caused their dissent therefrom to be entered at large on the minutes of the board of trustees at the time, and except those not present at the time when the same did happen, shall, in their individual and private capacities, be liable jointly and severally, to the said corporation, and in the event of its dissolution, to any of the creditors thereof for the full amount of such excess.

Sec. 15. No corporation organized under this Act shall, by any implication or construction, be deemed to possess the power of issuing bills, notes or other evidences of debt, for circulation as money.

Sec. 16. Each stockholder shall be individually and personally liable for his proportion of all debts and liabilities of the company contracted or incurred during the time that he was a stockholder, for the recovery of which joint or several actions may be instituted; and when a judgment in such action shall be recovered against joint stockholders, the court in the trial thereof shall apportion the amount of the liability of each, and in the execution thereof no stockholder shall be liable beyond his proportion so ascertained.

Sec. 17. No person holding stock as executor, administrator, guardian or trustee, or holding it as collateral security, or in pledge, shall be personally subject to any liability as a stockholder of the company, but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of the executor, administrator, guardian or trustee shall be liable in like manner and the same extent as the testator or intestate or the ward or person interested in the trust fund would have been if he had been living and competent to act and to hold the stock in his own name.

Sec. 18. It shall be the duty of the trustees of every company incorporated under this act to cause a book to be kept, containing the names of all persons, alphabetically arranged, who are or shall become stockholders of the corporation, and showing the number and designation of shares of stock held by them respectively, and the time when they respectively became the owners of such shares; also a book or books in which shall be entered at length, in a plain and simple manner, all by-laws, orders and resolutions of the company and board of trustees and the manner and time of the adoption, which books, during the business hours of the day, Sundays, fourths of July, and the twenty-fifth day of December, the first of January, and such days as shall by law be set apart for public holidays excepted, shall be open for inspection of stockholders and the creditors of the company, each individual stockholder and their duly authorized agents and attorneys, at the office or principal place of business of the company; provided, that the office and books of such company shall be kept and the books of the company shall be open as aforesaid in the county in which the principal business is transacted, and every stock-

HeinOnline -- 1866 6 1866

holder and creditor as aforesaid or their agents or attorneys, shall have the right to make extracts from such books, or upon payment of reasonable clerk's fees therefor to demand and receive from the clerk or other officer having the charge of such books, a certified copy of any entry, shall be presumptive evidence of the fact therein stated in any action or proceedings against the company or any one or more of the stockholders.

Sec. 19. If the clerk or other persons having charge of such books shall make any false entry or neglect to make any proper entry therein, or shall refuse or neglect to exhibit the same, or allow the same to be inspected or extracts to be taken therefrom, or to give a certified copy of an entry therein, as provided in the preceding section, he shall be deemed guilty of a misdemeanor and shall forfeit and pay to the party injured a penalty of one hundred dollars and all damages resulting therefrom to be recovered in any court of competent jurisdiction in this territory, and for neglect to keep up such books for inspection and in the place provided for in the last section, the corporation shall forfeit to the people of Montana Territory the sum of two hundred and fifty dollars for every day they shall so neglect, to be sued for and recovered before any court of competent jurisdiction in the county or district in which the principal business of such company is transacted; and it shall be the duty of the district attorney within and for such district to prosecute such action in the name of and for the benefit of the people of Montana Territory; and it is further provided that in case any such incorporated company shall refuse or neglect, for the space of one full year after the passage of this act to comply with the provisions of this and the preceding section, then upon the showing of such facts by petition of any person aggrieved thereby and due proof thereof before the district judge in the district in which such company's principal business is transacted, after such company shall have been duly notified thereof by summons to be issued by said judge, citing such company to appear before such judge at a time and place therein mentioned, which shall not be less than ten nor more than thirty days from the date of such summons, such company shall by said judge be declared and decreed to be disincorporated so far as to deprive said company of all privileges of this act, but in no manner to effect the remedy of all persons against such company to be exercised as this act provides: provided, that nothing contained in the provisions of this section concerning the disincorporation of such companies shall be so construed as to prevent the enforcement of the other remedies in this section mentioned at any time after the passage of this act except as herein provided.

Sec. 20. Any company incorporated under this act, may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of capital.

Sec. 21. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders may be called, by a notice signed by at least a majority of the trustees and published for at least four

HeinOnline -- 1866 7 1866

weeks in some newspaper published in the county where the principal place of business of the company is located, or in some newspaper nearest thereto which shall specify the object of the meeting, the time and place where it is to be held, the amount to which it is proposed to increase or diminish the capital, and a vote of two thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of capital stock.

Sec. 22 If at any meeting so called, a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings showing a compliance with these provisions, the amount of capital actually paid in, the whole amount of the debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out, signed, and verified by the affidavit of the chairman and secretary of the meeting, certified by a majority of the trustees and filed as required by the second section of this act, and when so filed, the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate.

Sec. 23. Upon the dissolution of any corporation formed under this act, the trustees at the time of dissolution, shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation, by the name of trustees of such corporation, collect and pay the outstanding debts, settle all its affairs and divide among the stockholders, the money and other property that shall remain after the payment of the debts and necessary expenses.

Sec. 24. Any corporation formed under this act may dissolve and disincorporate itself by presenting to the district Judge of the district in which the meetings of the trustees are usually held, a petition to that effect, accompanied by a certificate of the proper officers, and setting forth that at a general or special meeting of the stockholders, called for that purpose, it was decided by a vote of two-thirds of all the stockholders to disincorporate, and dissolve the corporation; notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the county, once a week for four consecutive weeks, or if no newspaper is published in the county, by advertisement posted up for thirty days in three of the most public places in the county, at the time and place appointed or to any other to which it may be postponed by the Judge, he shall proceed to consider the application and if satisfied the corporation has taken the necessary preliminary steps and obtained the necessary votes to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

Sec 25 This act shall take effect and be in force from and after its passage.

CHARLES S. BAGG,
President of the Council.
A. E. MAYHEW,
Speaker of the House of Representatives.
Approved, Dec. 10, 1866. GREEN CLAY SMITH,
Governor.

HeinOnline -- 1866 8 1866

CHAP. II.—*An Act to Provide Revenue, and Collecting the same, for Territorial and County Purposes.*

Be it enacted by the Legislative Assembly of the Territory of Montana as follows:

SECTION 1. An annual ad valorem tax of forty cents on each one hundred dollars value of taxable property is hereby levied and directed to be collected and paid for Territorial purposes, upon the annual value of all taxable property in this Territory not by this act exempt from taxation. Upon the same property, the Board of County Commissioners in each county, is hereby authorized and empowered to levy and direct to be collected and paid annually an ad valorem tax for county purposes, a sum not exceeding one hundred cents on one hundred dollars value of taxable property in the county, for the support of the indigent sick; not more than two mills on the dollar, and the board of county commissioners of each county, are hereby empowered to levy annually and cause to be collected in each of their respective counties, in addition to the amount provided above, such special tax as they may deem necessary, not to exceed the sum of two dollars on each taxable inhabitant of the county, and all monies arising from such tax shall be appropriated to the care, support and maintainance of the indigent sick, as in this act provided; the taxes specified in this act shall be collected at the same time and in the same manner as other taxes herein provided, and the same tax when collected shall be set apart and known as the "Indigent Sick Fund" An ad valorem tax of not more than three mills, nor less than one mill of all taxable property in the Territory is hereby levied, and the board of county commissioners of each county, shall annually at the time of levying other county taxes, levy a county school tax for the support of common schools, which shall be added to the county tax and collected at the same time and in the same manner as hereinafter provided, and the said tax when collected shall be set apart and known as the "School Fund."

No tax collector or county treasurer shall receive any fees or compensation whatever for collecting, receiving, keeping, transporting or disbursing any school monies, (except what may be specially provided for,) but the whole monies collected as provided for in this act, shall be paid into the county treasury and disbursed by him according to law. The board of trustees or county superintendent of each city, town or district, may use the monies from the county school fund to purchase sites, build or rent school houses, to purchase libraries, and to pay teachers or contingent expenses as they may deem proper. The board of county commissioners of each county, is hereby authorized and empowered annually, to levy and collect such additional and special taxes as the laws of the Territory may authorize and require them to levy and collect; *provided*, however, that when the board of county commissioners levy any tax, they shall cause such levy to be entered on the records of their proceedings, and shall direct their clerk to deliver a certified copy thereof, to the Assessor and Treasurer, each of whom shall file said copy in his office.

SEC. 2. The board of county commissioners of each county shall, on or before the 15th day of March of each year, divide their respective counties into a convenient number of districts, for the purpose of assessing the property of each county, and shall, prior to the first Monday of

HeinOnline -- 1866 9 1866

April, unless otherwise provided by special act, annually assess the amount of taxes that shall be levied for county purposes, designating the number of cents which shall, on each one hundred dollars of taxable property, real or personal, be levied for each purpose, and shall add thereto the amount levied by law on each one hundred dollars of taxable property, real or personal, for Territorial purposes. The board of county commissioners of the respective counties shall, prior to the first Monday in April of each year, cause to be prepared suitable and well bound books, for the use of the assessor, in which he shall enter his tax list or assessment apart and known as the "School Fund." No tax collector or county treasurer shall receive any fees or compensation whatever for collecting, receiving, keeping, transporting or disbursing any school monies, (except what may be specially provided for) but the whole monies collected as provided for in this act shall be paid into the county treasury and disbursed by him according to law. The board of trustees or county superintendent of each city, town or district, may use the monies from the county school fund to purchase sites, build or rent school houses, to purchase libraries and to pay teachers or contingent expenses as they may deem proper. The board of county commissioners of each county is hereby authorized and empowered, annually to levy and collect such additional and special taxes as the laws of the Territory may authorize and require them to levy and collect: *Provided*, however, that when the board of county commissioners levy any tax, they shall cause such levy to be entered on the records of their proceedings and shall direct their clerk to deliver a certificate roll as hereinafter provided. Said books shall contain suitable printed heads and be ruled to conform with the form of the assessment roll, as provided in this act.

SEC. 3. Every tax levied under the provisions or authority of this act is hereby made a lien against the property assessed and a lien shall attach against the real property for the tax levied upon the personal property of the owner of such real estate, which lien shall attach on the first Monday in April in each year on all property then in the Territory and on all other personal property whenever it reaches the Territory and until the December next following shall not be satisfied or removed until all the taxes are paid, or the property has absolutely vested in a purchaser under sale of taxes.

SEC. 4. All property of every kind and nature whatsoever within this Territory shall be subject to taxation, except;

First. All lands or other property of the Territory, or of any municipal corporation or county of the Territory, and all lands or other property of the United States.

Second. All houses owned and occupied by fire and military companies, also their apparatus, and all squares and lots dedicated or kept open for health, public use or ornament, or belonging to any county, city, town or village in this Territory.

Third. Public libraries, colleges, school houses and other buildings for purposes of education, with their furniture, libraries and other equipments, and the lots or lands thereto appurtenant and therewith, so long as the same shall be used for that purpose: *Provided*, That when any of the real property mentioned in this sub-division is private

HeinOnline -- 1866 10 1866

property, from which a rent or other valuable consideration is received for its use, the same shall be taxed.

Fourth. Public hospitals, asylums, poor houses and other charitable and benevolent institutions for the relief of the indigent or afflicted, and the lots or lands thereto appurtenant, with all furniture and equipments, all grounds and building belonging to agricultural societies, so long as they shall be used for that purpose only.

Fifth, Churches, chapels, and other buildings for religious worship, with their furniture and equipments, and lots of ground appurtenant and used therewith, owned by any religious association or society.

Sixth, The building, and lots of ground appurtenant thereto, and used therewith, owned and used by the order of Free and Accepted Masons, the independent order of Odd Fellows, or any benevolent association or society, except such buildings and lots of ground as are owned and occupied in connection with individual owners, then only to the extent owned and occupied by such orders and societies

Seventh, Cemeteries and grave-yards, set apart and used for interring the dead, except when such cemetery or grave-yard is owned as individual property and charges made therefor.

Eighth, The property of widows and orphan children, not to exceed the amount of one thousand dollars to any one family.

Ninth, Mines and mining claims and growing crops.

Tenth, Tools of mechanics, farming tools and implements of the husbandman, libraries of professional men, and private citizens, household furniture of families or house-holders, which do not exceed in value to each, the sum of one hundred dollars, and tools of miners which do not exceed in value to each owner the sum of fifty dollars, shall not be subject to taxation: *Provided,* That nothing in this section shall be so construed as to exempt from taxation, possessory claims to the public lands of the United States or of this Territory, or proceeds of the mines; and, *provided,* further, that nothing herein shal be so construed as to interfere with the primary title to the lands belonging to the United States, and, *provided,* further, All property shall be taxed at its cash value at the time of making such assessment.

SEC. 5. The term "real estate" when used in this act, shall be deemed and taken to mean and include all houses, buildings, fences, ditches, structures, erections, toll roads and bridges, or other improvements built or erected upon any land, whether such land be private property or property of the Territory or of the United States, or of any in the Territory, the ownership of, or claim to, or possession of or right of possession to, any lands within the Territory and the claim by, or the possession of any person, firm, corporation, association or company to any land, and the same shall be listed under the head of real estate.—The term, personal property, whenever used in this act shall be deemed and taken to mean, and it is hereby declared to mean and include all household and kitchen furniture, musical instruments, gold and silver plate, watches, clocks, all law, medical and miscellaneous libraries, all goods, wares, and merchandise, all chattels of every kind and description, all money on hand, or on deposit in bank or banks or with individuals, all monies at interest, secured by mortgage or otherwise, gold dust,

HeinOnline -- 1866 11 1866

gold and silver bars, bullion, solvent debts, other than those mentioned in this section, when the amount exceeds the same character of indebtness of the party assessed; stocks of goods on hand, horses, mules, oxen, calves, beef cattle, hogs, sheep, goats, jacks and jennies and cattle of every description, waggons, carriages, buggies, omnibusses, hacks, stages, stagecoaches, sulkies, carts, drays, and all other vehicles whether for use, pleasure or hire; all machines and machinery; all works and improvements; all steamers, vessels, and water craft of every kind and name, navigating or used upon the waters of any river or lake within this Territory, or having a general depot or terminus within this Territory, all capital loaned, invested or employed in any trade, commerce or business whatsoever; the capital stock of all corporations, except the capital stock of corporations organized for mining purposes, companies, associations, ferries or individuals doing business or having an office within this Territory; the money, property, and effects of every kind except real estate; of all banks, banking institutions, or firms, bankers, money lenders and brokers, and all property of whatever kind or nature not included in the term real estate, as the said term is defined in this act; *provided*, that gold and silver bearing ores, quartz or minerals, from which gold or silver is extracted, when in the hands of the producers thereof, shall not mean nor be taken to mean, nor be listed and assessed under the term, "personal property" as used in this section of this act, but is specially excepted therefrom and shall be listed, assessed, and taxed as hereinafter provided.

SEC 6. Each county assessor shall before entering upon the duties of his office, make and file his bond in the office of the county clerk, with two or more sureties, to be approved by the Probate Judge, in the penal sum of ten thousand dollars conditional for the true and faithful performance of the duties of his office as such assessor and shall be otherwise conditional as now is or may be required by law, and shall take the oath of office, which shall be endorsed on his certificate of appointment or election; said assessor shall have the power of appointing one or more deputies, subject to the approval of the board of county commissioners, to aid in his official duties, for whose duties he shall be responsible and who shall be a resident of the district. If any assessor or deputy assessor shall be guilty of neglect of any of the duties enjoined on him by law, he shall be liable to indictment in any court of competent jurisdiction, and fined in any sum not exceeding five hundred dollars — Suit may be instituted on the assessor's bond in the manner prescribed by law, for the benefit of any person who may be aggrieved by the wrongful act or conduct of such assessor or of his deputy. The assessor and his deputies are hereby authorized to administer all oaths and affirmations contemplated by law, in the discharge of their duties as assessors. The assessor and his deputies shall render to the board of county commissioners an account under oath of the number of full days of eight hours each, actually engaged by them in assessing, and shall receive therefor eight dollars per day

SEC. 7 Between the first Monday in April and the first Monday in October in each year, the county assessor, except otherwise required by special enactment, shall ascertain by diligent inquiry and examination

HeinOnline -- 1866 12 1866

all property in his county, real or personal, subject to taxation, and also the names of all persons, corporations, associations, companies or firms, owning, claiming or having possession or control thereof. For the purpose of enabling the assessor to make such assessment, he shall demand from each person and firm, and from the president, cashier, treasurer or managing agent of each corporation, association or company, including all banking institutions, associations or firms, within his county, a statement under oath or affirmation, of all real estate or personal property within the county, owned, claimed by or on deposit with, or in the possession or control of such person, firm, corporation, association or company. If any person, officer or agent shall neglect or refuse on demand of the assessor or his deputy, to give under oath or affirmation the statement required by this section, or shall give a false name, or shall refuse to give his or her name, or shall refuse to swear or affirm, he or she shall be guilty of misdemeanor, and shall be arrested upon complaint of the assessor or his deputy, and upon conviction before a justice of the peace of the county he or she shall be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term of not less than five days nor more than two months, or by both such fine and imprisonment at the discretion of the court. If the owner of any property not listed by another person shall be absent or unknown, or fail to make the statement under oath or affirmation as herein provided, within five days after demand is made therefor, the assessor shall make an estimate of the value of such property, and assess the same accordingly. If the name of such absent owner is known to the assessor, the property shall be assessed in his or her name; if unknown to the assessor the property shall be assessed to unknown owners. It is hereby made the duty of the assessor immediately to report to the district or prosecuting attorney of the county, the names of all persons neglecting or refusing to give the statement as required by this section of this act, and it is hereby made the duty of such district or prosecuting attorney to prosecute all persons so offending.

SEC. 8. The Assessor and his sureties shall be and are hereby made liable for the taxes on all taxable property within the county, which is not assessed through his wilful neglect: *provided*, however, it can be proved that any non assessment was caused by the refusal of the owner, agent or claimant of such property, or of the person or persons having it in possession, or under his or their control or charge, to give a list of it to the Assessor, the Assessor shall not be liable, but the person or persons whose refusal to give the assessor such list, caused the omission, shall pay double the taxes imposed upon the property when assessed.

SEC 9. At the same time and in the same manner as other lists of property herein required are given, each and every person shall deliver under oath or affirmation to the assessor or his deputy, a similar list of all real estate with the improvements thereon and appertaining thereto, and all personal property which he and the firm of which he is a member, and the corporation of which he is president, treasurer, cashier, secretary, trustee or managing agent, owns, claims or has the charge, possession or control of in any other county of the Territory which he does not of his own personal knowledge know has been assessed in such other county for

HeinOnline -- 1866 13 1866

that year, which list shall particularly describe each species of property, (so that the same may be found and known by such description) and all vessels, steamers and other water-craft; and shall also specify each and all deposits if any, and persons with whom the same may be found, unless he shall have included all such money, gold dust, gold and silver bars and bullion, in the list of property in his county which it shall be lawful to do; and shall also specify the kind and nature of all other personal property in such county belonging to or under the charge, control or in possession of him or them.

SEC. 10. Every assessor, as soon as he shall have received a list of any property in another county, under the foregoing section, shall make out from the list delivered to him, a list for each county in which any such taxable property may be, and transmit the same by mail or express to the assessor of the proper county, who shall assess the same as other taxable property therein, if it has not been before assesed the same year.

SEC. 11. The owner and holder of any stock in any firm, incorporated company or association the entire capital of which is invested in property which is assessed, or the capital which is assessed, shall not be assessed individually for his stock in such company or association, nor shall any person having an interest in any partnership or firm be individually assessed for the partnership or firm property, if such property is assessed to the partnership or firm. The property of every firm, incorporated company or association, shall be taxed in the county where the property is situated: *Provided*, That whenever any portion of the property of any such company shall be assessed and taxed in the county wherein the same is located, then upon presentation at the principal office of such company, of the certificate or receipt of the collector of said county, that such taxes have been paid in another county, the same shall be deducted at the principal office, from the aggregate amount of taxes imposed upon, or paid by said company for the same property in the county wherein the principal office of the said company is situated.

SEC. 12. The undivided property of deceased and insane persons may be listed to the heirs, guardians, executors or administrators, as the case may be, and a payment of taxes made by either shall bind all the parties in interest for their equal proportions, it is hereby made the duty of every probate judge, from time to time to direct each and every administrator, executor and guardian, (which direction may especially be given in each case or by general order) to pay out of the funds of the estate all taxes that have attached or accrued against such estate after the passage of this Act; and no order or decree for the distribution of any property of any decedent among the heirs or devisees shall be made until the taxes which have been attached to or accrued against the estate shall have been paid.

SEC. 13. If any person shall wilfully make or give under oath or affirmation a false list of his, her or their taxable property, or a false list of taxable property under his, her or their control, such person shall be deemed guilty of perjury and upon conviction therefor, shall be punished as is by law provided for the punishment of perjury.

SEC. 14. It shall be the duty of the assessor to prepare a tax list or assessment roll alphabetically arranged, in the book or books furnished

HeinOnline -- 1866 14 1866

him by the board of county commissioners for that purpose, in which book or books shall be listed all the real estate, improvements on real estate, including improvements on public lands, and other personal property within the limits of the county, and in said book or books he shall set down in separate columns; *First*—The names of the taxable inhabitants, firms, incorporated companies or associations in alphabetical order, if known; if unknown, the property shall be assessed to unknown owners. And if any person shall refuse to make a statement of his property under oath as required by this Act, that fact shall be noted under his name. *Second*—All real estate including the ownership of claim to, or possession of, or right of possession to any land and improvements taxable to each inhabitant, firm, incorporated company or association described by metes and bounds, or by common designation or name; if situated within the limits of any city or incorporated town, described by lots or portions of lots; if without said limits, giving the number of acres, as near as can be conveniently ascertained, and the location and township where situated. All improvements on public lands, describing as nearly as possible the location of said improvements: *Provided*, That when two or more parties claim, by description, the same land, it shall be assessed to each party making such claim, or giving such description, according to the estimated value of the claims of each. *Third*—The cash value of real estate, including the possessory claim to lands and the improvements thereon. *Fourth*—The cash value of all improvements or real estate including possessory claims, where the same is assessed to a person other than the owner of said real estate. *Fifth*—The cash value of all personal property, except improvements on real estate or public lands taxable to each. *Sixth*—The total value of all property taxable to each and no further description of personal property than that required by the foregoing provisions of this section shall be needed or requisite to render the assessment binding and effective.

The form of the assessment roll shall be substantially as follows

Tax payers names,		
Description of property.		
Real estate—No. of acres.		
Section.		
No. of lot.		
No. of block.		
Value of real estate; or possessory claim and improvements,	$	cts.
Value of improvements or real estate or possessory claims assessed to persons other than the owners of said real estate or possessory claims,	"	"
Value of personal property,	"	"
Total value,	"	"
Apportionment of taxes to Territory.		
General fund		
Indigent sick fund.		
School fund.		
Contingent fund.		
Reduction fund.	Taxes.	
Sum total.	Remarks.	

HeinOnline -- 1866 15 1866

SEC. 15. The Assessor shall also, when directed by the board of county commissioners, in a book, make a map or plan of the various blocks within any incorporated city or town, and shall mark therein the various subdivisions as they are assessed, and in each subdivision he shall mark the names of persons to whom it is assessed.

SEC. 16. On or before the first Monday in October in each year, the assessor shall complete his tax list or assessment roll and shall attach his certificate thereto, and deliver it and the map, book and all the original lists of property given to him, to the clerk of the board of county commissioners; and as soon as he receives said assessment roll the clerk of the board of county commissioners shall give notice of the fact, specifying therein the time of meeting of the board of equalization, by publication in one newspaper, if there be one published in the county, and if none then in such manner as the board of county commissioners shall direct, and shall keep the roll open in his office for public inspection.

SEC. 17. The board of county commissioners shall constitute a board of equalization, of which board the clerk of the board of county commissioners shall be clerk. The board of equalization shall meet on the second Monday of October in each year, and shall continue in session from time to time until the business of equalization presented to them is disposed of: *Provided*, however, they shall not sit after the third Monday in October except as in this section provided. The board of equalization shall have power to determine all complaints made in regard to the assessed value of any property, and may change and correct any valuation either by adding thereto or deducting therefrom, if they deem the assessment roll either above or below its true value, whether said sum was fixed by the owner or the assessor. Except that in case where the person complaining of the assessor, and has refused to give the assessor his or her list under oath as required by this act, no reduction shall be made by the board of equalization in the assessment made by the assessor, and if the board of equalization shall find it necessary to add to the assessed valuation of any property in the assessment roll, they shall direct their clerk to give notice to the persons interested by letter deposited in the post office, or express or otherwise, naming the day when they shall act in that case and all giving a reasonable time to appear. As soon as possible after the adjournment of the board of equalization in October, its clerk shall make out a list of all persons, the value of whose property has been added to, and the amount so added in the assessment roll, who have not appeared before the board, and a list of all property, the valuation of which has been added to on the assessment roll, with the amounts so added, the owners of which have not appeared before the board; and the board of county commissioners shall cause the same to be published in one newspaper in the county, if there be any, and if not, then by posting copy of the same in a public and conspicuous place in each election precinct in the county; and any person, to the assessed valne of whose property there was an amount added, not appearing before the board of equalization in October, may appear before the board in November, and upon making affidavit that he had no knowledge of such increased valuation of his property, he shall have a hearing before the board of equal-

HeinOnline -- 1866 16 1866

ization, and the determination shall then be final, and the clerk of the board shall note all charges made, and make the charges required on the original assessment roll. The assessor either in person or by his deputy shall be present; also any deputy whose testimony may be required by the parties appealing to the board; and they shall have the right to make any statement touching such assessment, and producing evidence relating to questions before the board The recorder of the county shall also be present and attend on the board of equalization with an abstract of all unsatisfied mortgages and liens remaining on record in his office, arranged in alphabetical order, for which service he shall receive no compensation, and the board of equalization shall make use of such abstracts and all other information that they can procure from the recorder in the recorder's office, or otherwise, in equalizing the assessment roll of the county: and may require the assessor to enter upon such assessment roll any mortgage or lien, or other property which has not been assessed; and the assessment and equalization so made shall have the same force and effect as if made by the assessor before the delivery of the assessment roll by him to the clerk of the board of equalization. A quorum of the board of county commissioners shall be sufficient to constitute the board of equalization and a majority of the members present shall determine the action of the board. On the second Monday in November the board of county commissioners shall meet as a board of equalization, to equalize the assessment roll and hear complaints in the excepted cases mentioned in this section.

SEC. 18. The several county treasures of this Territory shall be ex officio tax receivers, under the provisions of this act, for their several counties; and they shall receive all taxes on real and personal property, (not otherwise provided for in this act) and receipt for the same.

SEC. 19. During the session, or as soon as possible after the adjournment of the board of equalization, its clerk shall enter upon its assessment roll all the changes and corrections made by the board, and thereupon deliver the assessment roll so corrected, to the board of county commissioners, whose duty it shall be to add up the columns of valuation and enter the total value of each description of property on the roll; to carry out in seperate columns on the original assessment roll the Territorial, county, and other taxes, and totals of all taxes to each person — He shall attach his certificate thereto, and on or before the second Monday in November, he shall deliver the assessment roll, together with the maps or plot book, to the ex officio tax receiver. On delivering the assessment roll to the ex officio tax receiver, the board of county commissioners shall charge him with the amount of all taxes levied, and shall forthwith transmit by mail, or otherwise, to the auditor of the Territory a statement of the amount of real and personal property assessed in the county and the amount of taxes thereon.

SEC. 20. Upon receiving the assessment roll from the board of county commissioners the ex officio tax receiver shall proceed to collect and receive the taxes, and shall forthwith give notice by publication in one newspaper, if there be any published in his county; and if none be published, then by posting notices in three or more public and conspicuous places in the county that the Territorial and county taxes are due and

HeinOnline -- 1866 17 1866

payable, and that the laws in regard to their collection will be strictly enforced; and it shall be the duty of all persons owning real estate, and personal property, to pay their taxes, or cause such taxes to be paid to the county treasurer as ex officio tax receiver, at his office in said county.

SEC. 21. It is hereby made the duty of the county treasurer as ex officio tax receiver, and he is authorized and empowered either in person or by deputy, to accompany the assessor, through the county, and to collect and receive the taxes upon all movable personal property, and upon all steamers, vessels and water crafts of any kind and name, navigating or used upon the waters of any river or lake within the Territory, or having a general terminus or depot within this Territory, and upon the entry of any assessment of movable personal property, to any person firm, corporation, association or company, who does not own real estate sufficient in his opinion to insure the payment of such tax, within the county, to demand the payment of the taxes upon the same; and if such person, firm, corporation or company or association, shall refuse or neglect to pay such taxes, the treasurer as ex officio tax receiver, shall, by virtue of the power herein vested in him, to proceed to collect such taxes in the same manner as hereinafter prescribed by law, and be allowed the same compensation as allowed to the assessor.

SEC. 22. Whenever any tax is paid to the ex-officio tax receiver, he shall mark the word "paid," and the date of payment in the assessment roll, opposite the name of the person or description of the property liable for such taxes, and shall give a receipt therefor, specifying the amount of the assessment, and the amount of the tax, and a description of the property assessed. But no ex-officio tax receiver shall receive any taxes for any portion less than the least subdivision entered upon the assessment roll; *provided*, always that an owner of undivided real estate, may pay the proportion of taxes due on his interest therein. On the second Monday in November, the ex-officio tax receiver, at the close of his official business on that day, shall enter upon the assessment roll a statement that he has made a levy upon all the property therein assessed, the taxes upon which have not been paid, and shall immediately ascertain the total amount of taxes then delinquent, and file with the board of county commissioners, the list of all persons and property then owing taxes, verified by the oath of himself or deputy, which shall be completed by the third Monday in November, and shall be known as the delinquent list.

SEC. 23. The county treasurer shall on Monday of each month, apportion all the money that shall have come into his hands as ex-officio tax receiver during the preceding month, into the several funds as provided by law, and shall make out a statement under oath of the same, and transmit said statement to the board of county commissioners, to be by them filed in their office. On the last Monday in November in each year, the ex-officio tax receiver shall attend at the office of the board of county commissioners, with the assessment roll, and one of the members of the board or their clerk, shall then and there administer to the ex officio tax receiver, an oath which shall be written and subscribed on the assessment roll, to the effect that each person and all property assessed in said roll on which taxes have been paid to him, has the word "paid" marked opposite the name of such person, or the description of such pro-

HeinOnline -- 1866 18 1866

perty, and the board of county commissioners shall then foot up the amount of taxes remaining unpaid, and shall make a final settlement with the ex-officio tax receiver of all taxes charged against him on account of said assessment roll. Within ten days after such final settlement, the county commissioners of each county shall transmit by mail or otherwise, to the auditor of the Territory, a statement in such form as the auditor of the Territory may require, of all and each particular kind of property assessed, and a statement of all and each kind of property delinquent, and of the total amount of delinquent taxes. For the services required by this section the board of county commissioners and ex-officio tax receiver shall receive no fee or compensation whatever.

SEC. 24. If any treasurer and ex-officio tax receiver shall refuse "for a period of five days," or wilfully neglect to make the settlement with, and statement to the board of county commissioners of his county as in this act required, he and his sureties shall be liable to pay the full amount of taxes charged upon the assessment roll, and the district or prosecuting attorney, of his own volition or on being instructed to do so by the board of county commissioners, shall cause suit to be brought against said treasurer and ex-officio tax receiver and his sureties for the full amount due on the books of the board of county commissioners. And if such suit is commenced, no credit or allowance whatever shall be made to such refusing or neglecting treasurer or ex-officio tax receiver, for taxes outstanding.

SEC. 25. At any time after the last day of November, and before the institution of suit as herein provided, any delinquent tax payer may, upon a certificate from the board of county commissioners giving a description of the property and the taxes due thereon, pay to the ex-officio tax receiver the taxes assested against said delinquent, with ten per centum additional thereon, taking from the ex-officio tax recevier duplicate receipts for the amount paid, one of which shall be filed with the county commissioners, and the other with the district or prosecuting attorney of the county. After having been served by any person with the duplicate receipt of the ex-officio tax receiver, for the total amount of taxes due from such person, or upon a piece of property, with ten per centum additional, the district or prosecuting attorney shall not commence the suit authorized by this Act against such person or property: *Provided*, That if any person shall fail to serve such receipt, such person shall pay all costs that may result from his or her negligence. The additional ten per centum provided by this section shall be paid into the county treasury for the use of the county.

SEC. 26. The ex officio tax receiver in the several counties of the Territory, when the property of any person or persons, company or corporations, liable to taxation, has been assessed, and who do not own real estate within the county, he shall immediately collect the taxes on the personal property so assessed, and if such person or persons, company or corporations, shall neglect or refuse to pay such taxes, the ex officio tax receiver or his deputy, shall seize sufficient of the personal property of the person or persons, company or corporations, so neglecting or refusing to pay, to satisfy the taxes and costs, and shall post a notice of such seizure, with a description of the property, in three public places in the

HeinOnline -- 1866 19 1866

township or district where it is seized, and shall at the expiration of five days, proceed to sell, at public auction, at the time and place mentioned in the notice, to the highest bidder, for cash, a sufficient quantity of said property to pay the taxes and expenses incurred; and for this service the ex officio tax receiver shall be allowed from the delinquent party, a fee of three dollars. Upon payment of the purchase money, he shall deliver to the purchaser, the property sold, with a certificate of the sale, the amount of taxes or assessment, and the expenses thereon, for which the property was sold; whereupon the title of the property so sold shall rest absolutely in the purchaser. If in any instance, the ex officio tax receiver shall be unable to find, seize, and sell sufficient of the property of such person, persons, company, or corporations, to pay such taxes and cost of sale, and if such person, persons, company or corporation, shall neglect or refuse, on request of the ex officio tax receiver to pay the same, or neglect and refuse to turn out to the ex officio tax receiver property sufficient to pay such taxes and costs of sale, it shall be his duty if the sum exceed one hundred dollars to go before the District Court or Probate Court, or the Judges thereof at chambers, and in cases of one hundred dollars, and less sums, then before a Justice of the township wherein such party may reside, and make affidavit of the fact of assessment, the amount of taxes, the inability to find and seize property sufficient to pay such taxes and costs of sale; also, the fact of neglect or refusal to pay the same, or turn out property sufficient to pay the same and costs of sale. And on the filing of such affidavit, the Court, or Judge, or Justice of the Peace, as the case may be, shall issue a citation, ordering the party to appear forthwith, or at a subsequent period, not to exceed five days, before such Court, Judge, or Justice of the Peace, to answer under oath concerning his property; such citation may be served by the ex officio tax receiver, sheriff, or any constable of the county, and shall be served by delivering a copy thereof to such party, personally; on the examination, if it shall appear that such party or parties, have any money, goods, chattels or effects, the Judge or Justice of the Peace shall order sufficient thereof to be turned out to the ex officio tax receiver to satisfy such taxes and costs of sale, and also, cost of proceeding on the citation; and in case of a wilfull neglect or refusal by such either party to obey the order of citation or the order to pay, or to turn out property aforesaid, such party or parties shall be deemed in contempt of such Court, Judge, or Justice of the Peace and may be proceeded against as in other cases of contempt in civil cases in the Courts of Justice of this Territory. For services under the provisions of this section, such fees shall be allowed as for similiar services in civil cases, to be collected only from parties owing such taxes. In other cases than herein provided, the proceedings under this section shall be conducted as provided in the Civil Practice Act of this Territory regulating proceedings supplemental to executions; and in case it appears from the affidavit of the ex officio tax receiver, that such person or persons owing such taxes is about to abscond from the county, or is about to convey his property with intent fraudulently to evade the payment of such taxes in such cases the citation herein mentioned may direct the officer serving the same to arrest such party or parties and bring him, her or them, before the

HeinOnline -- 1866 20 1866

Court, Judge, or Justice of the Peace issuing the same. It shall not be lawful for a party served with the citation mentioned in this section to sell or transfer his, her or their property or effects, so as to defeat the collection of taxes mentioned, or costs, or any part thereof, and any person or persons so doing shall be deemed guilty of misdemeanor and on conviction thereof, shall pay a fine not to exceed two hundred dollars; and should such taxes fail to be collected by such process, then no future liability shall attach to said ex officio tax receiver therefor.

SEC. 27. The ex-officio tax receiver shall, on the first Monday of each month, or at their first meeting thereafter, return to the board of county commissioners a list of all collections made under the provisions of the preceding section under oath, and it shall be their duty to mark the word "paid" on the assessment roll, opposite the name of each party whose taxes are so paid as soon as the same shall have been delivered to them.

SEC. 28. The ex-officio tax receiver shall within three days after receiving the delinquent list, deliver the same to the district or prosecuting attorney of his county, duly certified by him, charging him therewith, and shall at the same time publish a notice in some newspaper published in the county, if there be any, and if not, then by posting notices in three public places in said county that the said delinquent list has been deposited with the district or prosecuting attorney, and that unless the delinquent taxes therein specified are paid to the Treasurer as ex-officio tax receiver, within twenty days from the publication or posting of such notices, action will be commenced by the district or prosecuting attorney for the collection of said taxes and costs. Said ex-officio tax receiver shall make or procure and file with the district or prosecuting attorney, immediately, an affidavit, stating the contents of said notice and the manner and time of such publication or posting as required in this section. The district or prosecuting attorney, before receiving the delinquent list as provided in this section, shall enter into such additional bonds as may be required by the board of county commissioners.

SEC. 29. The district or prosecuting attorneys of the several counties of this Territory are hereby authorized and directed, immediately after the time specified in the preceding section, to commence action in the name of the Territory of Montana against the person or persons so delinquent, and against the real estate and improvements assessed, so delinquent, and against all owners or claimants to the same, known or unknown. Such action may be commenced in the county where such assessment is made, before any justice of the peace or court in the said county having jurisdiction thereof; and such jurisdiction shall be determined solely by the amount of delinquent tax sued for, not regarding the location of the lands, as to the township or district, nor the residence of the person, as to town, county or Territory.

SEC. 30. The complaint in said action may be as follows in form:

TERRITORY OF MONTANA, } Title of Court.
County of ....., }

The Territory of Montana

vs

A B & Co., and the real estate and improvements in (describing them.)

HeinOnline -- 1866 21 1866

The Territory of Montana, by C D, district or prosecuting attorney of the county of , complains of A B, and also the real estate and improvements (describing them with the same particularity, as in actions of ejectment, or actions for the recovery of personal property.) and for cause of action says: That between the first Monday in April and the first Monday in October, A. D, 18 , in the county of in the Territory of Montana, E F, then and there being county assessor of said county, did duly assess and put down on an assessment roll, all the real and personal property in said county subject to taxation, and that said assessment roll was afterward submitted to the board of equalization of said county, and was by said board duly equalized as provided by law; that said A B was then and there the owner of, and that there was duly assessed to him the above described real estate, improvements upon real estate and certain personal property, and that upon such property there has been duly levied for the first fiscal year A. D., 18 , a Territorial tax of dollars, and a county tax of dollars amounting in the whole to dollars, all of which is due and unpaid, of which amount dollars was duly assessed and levied against the real estate, and dollars against the improvements aforesaid, and dollars against the personal property. Wherefore said plaintiff prays judgment against A B for the sum of dollars (the whole of said tax) and separate judgment against said real estate and improvements for the sum of dollars, (the tax due on real estate, improvements and personal property,) and the ten per cent. damages for non-payment thereof at the time as required by law, and for such other judgment as to justice belongs, and for all costs subsequent to the assessment of said taxes, and of this action.

C D, District or Prosecuting Attorney, county of

If the property be assessed to an unknown owner, then any fictitious name may be inserted to represent such owner as defendant.

SEC. 31. Said delinquent list or copy thereof, certified by the board of county commisioners, and showing unpaid taxes against any person or property, shall be *prima facia* evidence in any court to prove the assessment, property assessed, the delinquency, the amount of taxes due and unpaid, and that the law in relation to the assessment and levy of such taxes have been complied with.

SEC. 32. The district or prosecuting attorney shall, on the receipt of any money for taxes, enter the same on his delinquent list opposite the description of the property, and shall, on Monday in each week after the time fixed in this act for the commencement of actions against delinquent tax payers, pay to the county treasurer all moneys collected by him for taxes, taking duplicate receipts for the amounts so paid, one of which receipts he shall, on the same day, file with the board of county commissioners, and shall at the same time file with them a list of all judgments obtained by him up to that date for taxes under the provisions of this Act, stating therein the names of the defendants, if known, or if unknown, a description of the property, the amount of each judgment, and the name of the court or justice, in which or before whom said judgment was obtained.

SEC. 33. On the first Monday of March in each year the district or

HeinOnline -- 1866 22 1866

prosecuting attorney shall attend at the office of the board of county commissioners with the delinquent tax list or lists, and the board of county commissioners shall then carefully compare the same with the Treasurer's receipts, and statements filed by the district or prosecuting attorney; and if the same shall be found to be correct, they shall give to him a receipt specifying the same. The district or prosecuting attorney shall at the same time deliver to the board of county commissioners a written statement of all delinquent taxes upon said delinquent list or lists remaining uncollected, or for which suit has been brought, with his reason in detail for not being able to collect the same, or for not bringing suit; and the board of county commissioners shall file the said delinquent list or lists, and shall revise the same by striking off such taxes as connot be collected, noting the changes made, and shall then return the same to the district or prosecuting attorney, taking his receipt therefor. The board of county commissioners, in their report to the Territorial Auditor, shall state the amounts stricken off the delinquent list or lists by them.

SEC 34. If any district or prosecuting attorney shall fail or refuse to pay to the county treasurer as provided in this act, any money collected by him for taxes, he shall forfeit his office and be forthwith removed therefrom, and shall be deemed guilty of misdemeanor, and upon conviction thereof shall be punished by a fine in any sum not exceeding five thousand dollars, or by imprisonment in the county jail for a period not exceeding one year, or by both such fine and imprisonment, according to the discretion of the court.

SEC. 35. All real property sold under the provisions of this act may be redeemed at any time before the expiration of one year from the date of sale, by the payment to the treasurer of the proper county, to be held by him subject to the order of the purchaser, of the amount for which the same was sold, and thirty per cent. interest per annum on such subsequent taxes, unless such subsequent taxes have been paid by the person for whose benefit the redemption was made, which fact may be shown by the treasurer's receipt. The county treasurer as ex-officio tax receiver shall, on application of any party to redeem any real property sold under this act, and being satisfied that such party has a right to redeem the same, and upon his payment of the proper amounts, issue to him a certificate of redemption, stating the facts of sale, the date of the redemption, the amount paid and by whom redeemed, and he shall make the entries accordingly. Immediately after the expiration of two years from date of sale, the treasurer then in office shall make out a certificate of sale as a deed, for each species of property sold and remaining unredeemed, and deliver the same to the purchaser upon the return of the certificate of the purchase.

POLL TAX.

SEC. 36. Each male inhabitant of this Territory, over twenty-one and under sixty years of age, and not by law exempt, shall pay a poll tax for the use of the Territory and county of two dollars.

SEC. 37. The Auditor of the Territory shall, before the first Monday in March in each year, cause proper blank receipts for poll taxes to be

HeinOnline -- 1866 23 1866

printed, of a uniform appearance, changing the style thereof each year; and said Auditor, after signing and numbering them, shall cause a number thereof, equal to the probable number of inhabitants in each county liable to pay a poll tax, to be immediately forwarded to the county treasurer of each county, taking his receipt for the same, who shall sign them, or so many of them as may be required, and make an entry thereof in a book to be kept for that purpose.

SEC 38. The county treasurer shall from time to time, issue to the Assessor, who shall be ex-officio poll tax collector, so many of the receipts for poll taxes as he may need, taking his receipt therefor and charging him therewith.

Sec. 39. No receipt for poll tax, other than that mentioned in Sec. 36 of this act, shall be used or given for the payment of such tax; and any assessor who shall receive any poll tax without delivering the proper receipt required by law, shall be guilty of a misdemeanor for each poll tax so received, and on conviction thereof shall be punished by imprisonment in the county jail for not less than three months nor more than one year, or by fine of not less than one hundred dollars nor more than one thousand dollars for each offence, or by both such fine and imprisonment.

SEC 40. The board of county commissioners in each county shall exact (if they deem advisable) an additional bond from the assessor as ex-officio poll tax collector, with additional sureties, in such penal sums as the said board shall believe to be necessary to insure the prompt and faithful payment to the county treasurer of all moneys received by such assessor for poll taxes.

SEC. 41. No person shall be deemed or held to have paid his poll tax, unless he be able to exhibit a receipt therefor, issued from the office of the Territorial Auditor or otherwise prove the payment of the same. To enforce the collection of poll taxes as provided in this act, the assessor may seize so much of any and every species of personal property whatsoever, claimed by any person, liable to, and refusing or neglecting to pay his poll tax, or property in the possession of or due from any other person, and belonging to such person so refusing or neglecting to pay such poll tax, as will be sufficient to pay the same and costs of seizure, which costs shall not exceed two dollars, and shall sell the same at any time or place giving verbal notice one hour previous to such sale; and any person indebted to another, liable to pay a poll tax, but who has neglected or refused to pay the same, shall be liable to pay said tax for such other person, after service upon him by the assessor of a notice in writing, stating the name or names of the person or persons so liable and owing a poll tax, and such debtor may, upon paying the same, deduct the amount thereof, with costs of serving such notice (which shall be one dollar) from such indebtedness.

SEC. 42. The assessor after having collected the poll tax for which such property was sold, and the necessary fees and costs of sale, shall return the surplus of the proceeds to the owner of the said property. A delivery of the possession of the property by the assessor or his deputy, to any purchaser, at any such sale, shall be sufficient title in the purchaser, without execution of a certificate of purchase thereof by the assessor.

SEC. 43. If any person shall give the assessor or his deputy a false

HeinOnline -- 1866 24 1866

name, or shall refuse to give his name. or if any person having men in his employ, shall refuse to furnish the assessor or his deputy when requested, the name and residence of each man employed by him, if known, or such person shall refuse to grant free access to the assessor or his deputy to the building or place where such men are employed, he shall be guilty of a misdemeanor, and shall be arrested on complaint of the assessor or his deputy, and upon conviction before a justice of the peace. he shall be punished by a fine of not less than ten dollars, nor more than one hundred dollars.

SEC. 44. Of the moneys collected as poll tax under the provisions of this act after all the expenses of collection are paid, seventy per cent. shall be paid into the county treasury for county purposes, and the remaining thirty per cent. shall be paid in for territorial purposes

SEC 45. On the first Monday in each month, the assessor shall make oath before the board of county commissioners, of the total number of poll taxes collected by him during the last preceding month; and shall at the same time, file with the county treasurer receipts for the total amount of poll taxes collected, less ten per cent. allowed by this act for his fees for collection; and on the first Monday in November in each year the assessor shall return to the county treasurer all the poll tax receipts received by him and not used; and shall pay to the county treasurer the total amount collected, and not paid heretofore, subject to the deduction as aforesaid. And on the same day, the county treasurer shall attend with the assessor at the office of the board of county commissioners, and they shall then and there finally settle with the assessor for all poll tax receipts signed by the treasurer and delivered to him, and all poll tax receipts returned by the assessor shall be forthwith transmitted by the treasurer, with his annual statement to the auditor of the Territory; and no poll tax receipts shall be valid for any year unless issued after the first Monday in February of each year.

SEC. 46 It shall be the duty of the assessor to keep a roll of the names of all persons who shall pay a poll tax in each year, and the date and amount of each payment; also, in a separate column of said roll, the names of all such persons liable to such tax, from whom he has demanded such tax, who have refused or neglected to pay the same, with the date of such demand; this return shall be certified by him as a true and full return, and shall be verified by his oath or affirmation.

SEC. 47 On the first Monday in November it shall be the duty of the county treasurer, and he is hereby required to forthwith transmit to the territorial auditor a certified statement of the number of poll tax receipts issued by him to the assessor; the number of such receipts returned to him by the assessor, and the amount of money paid over by the assessor into the county treasury on poll tax collections.

SEC. 48. An assessor who shall neglect to make the returns required by this act, shall forfeit and pay the sum of two hundred dollars to the use of the county, which may be recovered by suit on his official bond against his sureties, and the same shall work a forfeiture of his office.

PASSENGER TAX.

SEC. 49. There shall be levied and collected a capitation tax of one dollar upon every person leaving the Territory, by any railroad, stage

HeinOnline -- 1866 25 1866

coach, carriage, omnibus, wagon or other vehicle engaged or employed in the business of transporting or carrying passengers for hire, and every person leaving this Territory by any steamer, steamboat, vessel and water craft of every kind and name, engaged or employed in the business of transporting or carrying passengers for hire, and every person, firm, corporation or company, owning or possessing, or having the care or management of any railroad, stage coach, carriage, omnibus wagon or other vehicle or of any steamer, steamboat, vessel or water craft of any kind or name, engaged or employed in the business of transporting or carrying for hire, shall pay, in the manner as herein provided to the county treasurer as ex-officio license collector of the several counties within this Territory, the said tax of one dollar for each and every person so conveyed or transported from this Territory.

SEC. 50. For the purpose of collecting said tax, every such person, firm, company or corporation, their agent or agents, shall make a statement under oath, to the county treasurer or other officer authorized to collect said tax, of the number of passengers so conveyed or transported from the Territory by any railroad, stage coach, carriage, omnibus, wagon or other vehicle, or by any steamer, steamboat, vessel or water craft of whatever kind or name, and by him or them, or under his or their control or charge, on the first Monday of each month, for the preceding month, and shall pay over to the county treasurer or other officer, the capitation tax, as provided in this act, for each passenger so conveyed or transported, which tax shall be paid in the county from which such passengers shall be conveyed or transported.

SEC. 51. The county treasurer or other officer as aforesaid shall, upon the first Monday of each month, or at any time during the month call upon every such person, firm, company or corporation, or their agent or agents, and demand the statement and payment to him of the taxes for all passengers booked and conveyed or about to be conveyed out of this Territory, from their office or place of business, for the preceding month. Upon the giving of the statement and the payment of the taxes to the county treasurer or other officer as aforesaid, he shall give a receipt therefor, specifying the number of passengers conveyed by such person, firm, company or corporation, from that point out of the Territory, and the amount of capitation tax paid.

SEC. 52. If any of the parties, their agent or agents, required by this act to make a statement as provided in the foregoing section, shall neglect or refuse for a period of three days after such demand is made, to make such statement or payment, it shall be the duty of the collector or his deputy to go before a justice of the peace of the city, town or township, where the office of such person, firm, company or corporation is located, and make affidavit of the fact of such party or parties being engaged in the business of transporting passengers out of the Territory for hire, of the demand of the monthly statement of the capitation tax as provided for in this act and the refusal or neglect of such person, firm, company or corporation, their agent or agents, to comply with such demand; and on filing such affidavit, such justice of the peace shall issue a citation, ordering the party or parties, or his or their agent, to appear forthwith before such justice of the peace and answer under oath con-

HeinOnline -- 1866 26 1866

cerning the number of passengers conveyed or transported out of the Territory from that point or place for the preceding month; and in case of the neglect or refusal of the party or parties, his or their agent or agents, to obey the citation, or answer under oath before the justice of the peace as required in this section, such party or parties, his or their agent (as the case may be) shall be deemed in contempt of such justice's court and proceedings shall be had as provided in other cases of contempt in courts of justice in this Territory. The citation mentioned in this section may be served by the officer himself or any constable of the county.

SEC. 53. After obtaining the statement as provided in this act, if the party or parties, his or their agent or agents, shall neglect or refuse to pay the capitation tax due thereon, the county treasurer or other officer as aforesaid, may seize sufficient personal property belonging to such person or persons, firm, company or corporation, to pay such capitation tax and costs of seizure and sale, and shall sell the same at any time and place, upon giving one hours notice previous to such sale.

SEC. 54. The county treasurer after having deducted the taxes for which such property was sold, and the costs of sale (which costs shall be five dollars) shall return the surplus to the owner of the property or his agent. A delivery of the possession of the property by the officer to any purchaser at any such sale, shall be a sufficient title in the purchaser, without execution of a certificate of purchase thereof by the officer.

SEC. 55. For the purpose of making the statements herein required, the auditor of the Territory shall prepare, and cause to be printed, blanks of such character and form as he may deem proper. He shall also prepare, and cause to be printed, blank receipts, of such character and form as he may deem proper. And said auditor of the Territory shall transmit to the county commissioners of the several counties in the Territory, a sufficient quantity of said blanks, and they shall upon the demand of the ——— as ex officio collector of the capitation tax deliver to him as many of such blank statements as he may require, taking his receipt for the same. Upon the first Monday of each month the county treasurer shall file with [the] county commissioners or the auditor of the Territory the statements made to him, and shall also return to said county commissioners all blank statements, so that the number of statements filed, and the number returned shall balance the number of statements received. The county commissioners shall thereupon charge the county treasurer with the statements returned and filed, so that the account shall show the amount of money collected for said tax. The treasurer as ex officio tax collector shall, on the same day, pay over to the county treasurer all monies collected for passenger tax, taking duplicate receipts therefor, one of which he shall immediately file with the county commissioners, and they shall credit him with the amount so expressed in said receipts; and the county commissioners shall upon the same day make duplicates of all statements filed with them by the collector, and transmit the same to the auditor of the Territory.

SEC. 56. The county treasurers of the several counties of the Territory shall be ex officio collectors of the passenger tax, as provided in this act,

HeinOnline -- 1866 27 1866

and shall be entitled to receive and retain ten per cent of all money paid to them for said tax.

SEC. 57. All monies collected for passenger tax, after paying the legal expenses of collection, shall be paid into the Territorial treasury, at the same time and manner as other Territorial taxes, and shall be set apart and known as the contingent fund for Territorial purposes.

MINES.

SEC. 58. An ad valorem tax of one hundred cents on each one hundered dollars valuation (after the deduction for cost of extracting and reducing as provided in this act) is hereby levied and directed to be assessed collected and paid every three months, for Territorial and county purposes, on all ores, quartz, or minerals, from which gold and silver, or either, or copper, is extracted by any mill, arastra, smelting furnace, or any process whatever in this Territory. All said ores, quartz or minerals shall be assessed as follows: From the gross return or assessed value per ton, of all ores, quartz, or minerals from which gold and silver or either, are extracted in this Territory there shall be deducted the sum of twenty-five dollars per ton; and upon seventy-five per cent of the remainder (after such deduction is made [as] aforesaid) shall be taxed and levied and collected, as provided in this act.

SEC. 59. The valuation of all ores, quartz or minerals bearing gold or silver, or either, prepared to be sent out of the Territory for sale or reduction, shall be established to the satisfaction of the assessor, by the owner or owners, the agent or person having charge and control of such ores, quartz or minerals, from assay or otherwise; and such ores quartz or minerals, shall be assessed and taxed the same as ores reduced in this Territory: *Provided;* that when the owner or owners, his or their agent or agents, or person having charge or control of such ores, quartz or minerals aforesaid, refuses or neglects upon the demand of the assessor or his deputy, to establish the value thereof to the said assessor's, or his deputy's satisfaction, then for the purposes of this act, all such ores, quartz or minerals shall be assessed at five hundred dollars per ton, and no deduction shall be made from that valuation, or the cost of reducing said ores, quartz or minerals.

SEC. 60. Between the first Monday in January and the first Monday in March, also between the first Monday in April and the first Monday in June, also between the first Monday in July and the first Monday in August, also between the first Monday in October and the first Monday in November, in each year, the county assessor shall ascertain by diligent inquiry and examination, the name, title and location of all mines and mining claims in his county, from which gold or silver or either is extracted, and also the names of all persons, corporations, associations, companies or firms, owning, claiming or having possession or control thereof; and he shall then ascertain and determine, as provided in this act, the number of tons, and the value per ton of all ores, quartz or minerals extracted for reduction from the said mines or mining claims as aforesaid, and shall list and assess the same to the person, firm, corporation, association, firm or company extracting the ores or minerals as aforesaid, or owning or having possession, charge or control of said mine or mining claim; for the purpose of enabling the assessor to make such assessments,

HeinOnline -- 1866 28 1866

he shall demand from each person and firm, and from the President, Superintendent, Treasurer, and managing agent of such corporation, association or company, engaged in extracting minerals, ores or quartz bearing gold and silver or either a statement under oath or affirmation of the total amount and value of all gold and silver bars or bullion, received or produced from his or their mines, or mining claim, from reduction of ores, quartz or minerals, next preceding such demand of the assessor, also the number of tons from which said amounts were received or produced, also the value and number of tons shipped from the territory for the three months next preceding. The books relating to or used in the transaction of the business of any person or firm, association, company or corporation, engaged in extracting ores, quarts or minerals, bearing gold or silver or either, for reduction, shall on demand of the assessor or his deputy, be open to his inspection; if any person, superintendent, officer or agent, shall neglect or refuse, on demand of the assessor or his deputy, to give, under oath or affirmation, the statement required in this section, or shall neglect or refuse to give, on demand access to the assessor or his deputy, to the books as aforesaid, such person, superintendent, officer or agent shall be guilty of a misdemeanor, and shall be arrested on complaint of the assessor or his deputy, and on conviction thereof, before a justice of the peace, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars or by imprisonment in the county jail for not less than twenty days, nor more than three months, or by both such fine and imprisonment.

SEC. 61. In case of the neglect or refusal of the person or firm, or president, superintendent, treasurer or managing agent of any corporation, association, firm or company, to give under oath or affirmation the statement required in the preceding section, the assessor or his deputy may make an estimate from the best sources within his reach of the number of tons, the value per ton of all ores, quartz, minerals bearing gold or silver or either, extracted by such person, corporation, firm, association or company, for preceding quarter, and assess the same to them, and such assessment shall be as binding, lawful and effectual as if made upon a sworn or affirmed statement.

SEC. 62. The owner, agent or person owning or having charge or control of any mill arastra, smelting furnace, or any process by which gold and silver, or either, are extracted, shall keep or cause to be kept an accurate account of the number of tons of ores, quartz or minerals reduced or smelted, the name of the mine or mining claim, from which said ore, quartz or mineral from such mine or mining claim, and shall, upon demand of the assessor or his deputy give him a statement of the same under oath or affirmation. And if the owner, agent or person as aforesaid, neglect or refuse to give the statement as required by this section, the assessor or his deputy shall have the right to demand, and it is hereby made his duty to demand access to and inspection of all books of said owner, agent or person owning or having the charge or control of any mill, arastra, smelting furnace or other process as aforesaid, and if such owner, agent or person as aforesaid, shall, on demand of the Assessor or his deputy, neglect or refuse to give a statement under oath or affirmation, as provided in this section, or refuse to give access to the

HeinOnline -- 1866 29 1866

assessor or his deputy to the books as aforesaid, such owner, agent or person shall be guilty of a misdemeanor and shall be arrested on complaint of the assessor or his deputy and on conviction before a justice of the peace, shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in the county jail for not less than twenty nor more than sixty days, or by both such fine and imprisonment.

SEC. 63. From the statements or information so received it is hereby made the duty of the assessor to make out immediately a certified statement or statements of the number of tons of gold and silver bearing ores, quartz or minerals with the yield thereof per ton, reduced by such mill, arastra, smelting furnace or other process, from the mine or mining claim of any person, firm, corporation, association or company, situated in any other county in this Territory, stating particularly therein the number of tons, and the value per ton so reduced for such persons, corporations, associations, firm or companies, and transmit such certified statement immediately, by mail or express or otherwise, to the assessors of the county wherein the mine or mining claim of such person, firm, corporation, association or company is located.

SEC. 64 The proceeds of all mines, as specified in Sections 58 and 64 inclusive, shall be assessed and taxed in the county wherein the mine or mines are located.

SEC. 65. It shall be the duty of the assessor to prepare and complete, quarterly, on or before the first Monday in February, May, August and November, in each year, a tax list or assessment roll, which shall be known and designated as the "assessment roll of the proceed of the mines," alphabetically arranged in a book or books furnished him by the board of county commissioners for that purpose; in which book or books shall be listed or assessed the proceeds of all the mines in his county, as provided in this act and in said book or books, he shall set down in separate columns: *First*, the names of the owners, firms, incorporated companies or associations, engaged in the business of extracting ores, quartz, or minerals, bearing gold and silver, or either, and if any owner, firm or incorporated company, association, agent or superintendent, shall refuse to make the statement, or refuse to the assessor or his deputy, access to their books, as provided in this act, that fact shall be noted under his name, opposite the name of the owner, firm, incorporated company or association: *Second*, the number of tons of gold and silver bearing ores, quartz, or minerals extracted by such owners, firms, incorporated companies or associations for the preceding quarter year: *Third*, the assessed value per ton; provided, that ores, quartz, or minerals, where value does not exceed twenty-five dollars per ton, shall not be assessed, and shall not be included by the assessor, or by the owners, firms, incorporated companies or associations, their superintendents, or agents, in the statements required by this act: *Fourth*, the total assessed value: *Fifth* the amount after the deduction as provided in this act, upon which such taxes are levied.

The form of the Quarterly Assessment Roll shall be substantially as follows:

HeinOnline -- 1866 30 1866

Quarterly Assessment Roll of the Proceeds of the Mines

For the Quarter Ending ....

Name of owner, company, &c.; &c.,	Description of location of mills....	No. of tons extracted for the three months ending.....	Value per ton.....	Total value	Am't upon which the tax is levied..	Territorial proportion of tax.....	County proportion of tax.....

HeinOnline -- 1866 31 1866

SEC. 66. On or before the second Mondays in February May, August and November of each year, the assessor shall complete his tax list, or assessment roll, for the preceding three months respectively, and shall attach his certificate thereto, and deliver it, and the sworn or affirmed statements provided for this act to the county commissioners who shall examine said assessment roll, and ascertain that the assessments therein entered comply with the sworn or affirmed statements relating thereto; and in case of the neglect or refusal of any person, firm or corporation association or company, to give the statement as herein provided; that that fact is noted as heretofore provided they shall then proceed to extend on such quarterly assessment roll, the taxes, as provided in this act, on the proceeds of the mines; they shall add up the columns of valuation as set down in the assessment roll, and shall prepare a statement (which shall be under oath) of the total number of tons of ore, quartz or mineral, bearing gold and silver, listed upon said assessment roll, the total value thereof, the total amount on which the taxes were levied, and the total amount of taxes on the same, which statement they shall immediately forward to the Auditor of the territory.

SEC. 67. After adding up the columns of valuation, and extending the taxes as provided in the preceding section, the county commissioners shall attach their certificate thereto, and shall on or before the fourth Monday in February, May August and November in each year, deliver the assessment roll for the preceding quarter respectively, to the county treasurer for collection, and shall charge the treasurer with the full amount of taxes levied.

SEC. 68. Upon receiving the assessment roll of the taxes levied upon the proceeds of the mines, as provided in this act, for any quarter, the county treasurer as ex officio tax receiver, shall forthwith give notice, by publication in one newspaper, if there be any published in his county, and if none be published, then by posting notices in three public and conspicuous places, in his county, that the taxes on the proceeds of the mines, for the preceding quarter, are due and payable, and that the laws with regard to their collection will be strictly enforced, and shall proceed to collect the taxes by demanding the same (either in person or by deputy) of every person, firm, corporation, association, or company against whom they are assessed, his or their agent or agents, or the president, treasurer or trustee of any incorporated company so assessed. He shall use all due diligence, and make personal demand for taxes, if possible, on all persons, firms, corporations or companies owing the same on or before the second Mondays in March, June, September and December, after which he need not make such personal demand, but shall retain the assessment roll in his office, and receive the taxes offered to be paid thereon until the close of his official business, on the third Mondays in March, June, September, and December in each year. After which, it shall not be lawful for him to receive or receipt for any taxes, due on the assessment for the preceding quarter respectively; but he shall immediately ascertain the total amount of taxes then delinquent on the assessment of the immediate preceding quarter, and file in the office of the county commissioners, a statement of said amount, verified by the oath of himself or deputy, and shall proceed to make out a copy of the

HeinOnline -- 1866 32 1866

quarterly assessment roll as far as relates to delinquent tax payers. Said list shall be verified by the oath of himself or deputy, and shall be by him filed in the office of the county commissioners, as follows: The delinquent list for the quarter commencing January first and ending March thirty-first shall be filed on the fourth Monday in June in each year; the delinquent list for the quarter commencing April first and ending June thirtieth shall be filed on the fourth Monday in September in each year; the delinquent list for the quarter commencing July first and ending September thirtieth shall be filed on the fourth Monday in December in each year, and the delinquent list for the quarter commencing October first and ending December thirty-first shall be filed on the fourth Monday in March in each year.

SEC. 69. At any time while the assessment roll of any quarter is in the hands of the ex-officio tax receiver for collection, he may seize upon the personal property, or so much thereof as may be sufficient to satisfy the taxes and costs of any person, firm, corporation, association, or company who shall neglect or refuse to pay such taxes for one week after such demand of the ex-officio tax receiver or his deputy, and shall post a notice of such seizure, with a description of the property, and the time and place whereon it will be sold, in three public places in the township or precinct where it is seized; and shall, at the expiration of five days, proceed to sell at public auction, at the time and place mentioned in the notice, to the highest bidder for cash, a sufficient quantity of such property to pay the taxes and costs incurred. And for this service the ex-officio tax receiver shall be allowed from the party neglecting or refusing as aforesaid, a fee of three dollars, and upon payment of the purchase money, he shall deliver to the purchaser the property sold, together with a certificate of the sale and the amount of the taxes or assessment and expenses thereon, for which the property was sold; whereupon the title to the property so sold shall vest absolutely in the purchaser.

SEC. 70. If any person shall wilfully make or give under oath or affirmation a false statement to the ex-officio tax receiver, such person shall be deemed guilty of perjury and upon conviction thereof shall be punished therefor as is by law provided for the punishment of perjury.

SEC. 71. Whenever any tax is paid to the ex-officio tax receiver on the assessment of the proceeds of the mines, he shall mark the word "paid" opposite the name of the person, firm, corporation, association or company for the quarter for which such assessment roll was made out, with the amount of the tax assessed thereon.

SEC. 72. On the fourth Mondays in March, June, September and December, or during their quarterly sessions in each year, the ex officio tax receiver shall attend at the office of the county commissioners with the assessment of the proceeds of the mines for the quarter preceding respectively; and the county commissioners shall then and there administer an oath to the treasurer, which shall be written and subscribed on his assessment roll, to the effect that each person, firm, corporation, association or company, and all proceeds of the mines assessed in said roll on which the taxes have been paid, has the word "paid" marked opposite the name of such person, firm, corporation, association or company, and the county commissioners shall then foot up the amount of taxes

HeinOnline -- 1866 33 1866

remaining unpaid, and credit the ex officio tax receiver with the amount and shall then make a final settlement with him for all taxes charged against him on account of said assessment roll. Within ten days after such final settlement, the county commissioners shall transmit by mail, or otherwise to the Territorial auditor a statement in such form as the Territorial auditor may direct, of the number of tons of gold and silver bearing ore, quartz or mineral, and the value thereof, on which taxes have been levied, and the total amount of taxes delinquent thereon. For the services required by this section, the ex officio tax receiver shall receive no fees or compensation whatever.

SEC. 73. On Monday of each month, while the assessment roll of the proceeds of the mines shall be in the hands of the ex officio tax receiver for collection, he shall pay over to the county treasurer, after deducting the per centage as allowed in this act, all money coming into his hands from taxes on said assessment roll, taking duplicate receipts therefor, one of which he shall file with the county commissioners who shall credit him and charge the treasurer therewith.

SEC. 74. If any ex-officio tax receiver shall refuse, for the period of five days, to make the payments and settlements with the county commissioners of his county, as in this act specified, he and his sureties shall be held liable to pay the full amount of taxes charged upon the assessment roll for that quarter, and the district or prosecuting attorney of his own volition, or on being instructed to do so by the Territorial Auditor or the board of county commissioners of the county, shall cause suit to be brought against such ex-officio tax receiver and his sureties, for the full amount due on the books of the county commissioners on account of such quarterly assessment; and if such suit is brought no credit or allowance whatever shall be made to such refusing or neglecting ex-officio tax receiver for the delinquent taxes outstanding.

SEC. 75. The board of county commissioners of each county shall exact an additional bond from the ex-officio tax receiver in such penal sum (not to exceed twenty thousand dollars) as the said board shall believe to be necessary to insure the prompt and faithful payment into the county treasurer of all moneys received by him for taxes on the proceeds of the mines.

SEC. 76. The moneys arising from the tax from the proceeds of the mines as provided in this act, after paying the expenses of assessing and collecting the same, shall be paid into the county treasury, one half for the benefit of the Territory and one half shall go into the general fund of the county.

SEC. 77. Every tax levied under the provisions or authority of this act on the proceeds of the mines, is hereby made a lien on the mines or mining claims for which ores, quartz, or minerals bearing gold or silver, or either, is extracted for reduction, which lien shall attach on the first days of January, April, July and October of each year, for the quarter year commencing on those days respectively; and shall not be satisfied or removed until the taxes, as provided in this act, on the proceeds of the mines are all paid, or the title to said mines or mining claims has absolutely vested in a purchaser, under a sale for the taxes levied on the proceeds of such mines or mining claims.

HeinOnline -- 1866 34 1866

SEC. 78. The amount allowed and paid to the ex officio tax receiver for services under this act, so far as it relates to the taxation of the proceeds of the mines, shall be apportioned by the county commissioners in proportion to the Territorial tax, and charged to the Territory and county, rateably in said proportion, and a verified statement of the amount allowed by the board of county commissioners shall entitle the Territorial auditor to credit the county treasurer with such amounts.

SEC. 79. The county commissioners shall, within three days after receiving the delinquent list on the assessment of the proceeds of the mines for any quarter year, deliver the same to the district or prosecuting attorney. The district or prosecuting attorney shall be held responsible on his official bond, given for the faithful performance of his duties in collecting Territory and county taxes, for any wrong doing in collecting the taxes on the proceeds of the mines.

SEC. 80, The district or prosecuting attorney of the several counties of this Territory, are hereby authorized and directed, immediately on receiving the delinquent list from the county commissioners as provided in the preceding section to commence action in the name of the Territory of Montana, against the person, firm, incorporated company or association so delinquent, and against the mines or mining claims from which the gold and silver bearing ores, quartz or minerals were extracted and assessed so delinquent. Such action may be commenced in the county where such assessment is made, before any Justice of the Peace or court in said county having jurisdiction thereof, and such jurisdiction shall be determined solely by the amount of delinquent taxes sued for, not regarding the location of the mine or mining claim as to township, nor the residence of the person, firm, incorporated company or association, as to town, township, county or Territory

SEC. 81. The complaint in said action may be as follows:

Territory of Montana, }
County of..... } (Title of Court.)

The Territory of Montana
vs.

A. B. & Co., the possessory claim.....to the mine or mining claim (describing it.)

The Territory of Montana, by C. D. district or prosecuting attorney of the County of....., complains of A. B., and also the following mine or mining claim, (describing the mine or mining claim with the same particularity as in actions of ejectment) and for cause of action says: that between the first Monday in (here insert the time in which the assessor is directed to make the assessment for the quarter for which the taxes are delinquent) in the.....county of ....., in the Territory of Montana. E. F. being then and there county assessor of said county, did duly assess and set down on an assessment roll, for the quarter year commencing the first day of.....and ending the.....day of..... tons of gold and silver bearing ore, quartz, or mineral, extracted from the mine or mining claim designated and described in this complaint; said ore, quartz or mineral was assessed at.....dollars per ton,

HeinOnline -- 1866 35 1866

from the sworn (or affirmed) statement furnished by.....
....., his, (or their, as the case may be) agent (or superintendent) to the assessor; (or in case no statement was furnished the assessor, then the assessed value may be stated from the best source of information within the assessor's reach.) That said A. B. was then and there the owner of said possessory mine or mining claim, and did extract therefrom the gold and silver bearing ore, quartz or mineral assessed and upon which the taxes are now delinquent and unpaid. And that said ore, quartz or mineral was duly assessed to him and upon it there has been duly levied by the operation of the law taxing the proceeds of the mines, for the quarter commencing the first day of.....in the year of our Lord one thousand eight hundred and.....a Territorial tax of.....dollars, and a county tax of.....
dollars, amounting in the whole to.....
dollars, all of which was duly assessed and levied against the proceeds of the mines or mining claim as aforesaid. Wherefore, plaintiff prays judgment against said A. B. for the sum of.....dollars, and a separate judgment against the possessory mine or mining claim for the sum of.....dollars, the whole of said tax on the proceeds of the possessory mine or mining claim herein described, per quarter year delinquent; and for such further judgment as to justice belongs, and for all costs subsequent to the assessment of said taxes, and the commencement of this action.

.....,
C. D. District or Prosecuting Attorney,
County of.....

SEC. 82. So far as they are applicable and not otherwise expressly provided in this act, the complainant as provided in the preceding section, the means and manner of serving the papers, fees of the district prosecuting attorney and officers serving the papers, and in all other matters concerning the collection of delinquent taxes on the proceeds of the mines, the laws for the collection of taxes on real estate and personal property as provided in this act, shall apply to the collection of delinquent taxes on the proceeds of the mines.

SEC. 83. The several county treasurers in this Territory, shall settle for, and pay over to the Territorial treasurer quarterly all monies coming into their hands from the tax on the proceeds of the mines, and all other sources, and going to the Territory at the same time and in the same manner as is provided by law for settling and paying over the Territory's proportion of monies arising from the tax on real and personal property or other sources of territorial revenue.

SEC. 84. The treasurers of their respective counties shall, on the second Monday of November of each year (which shall be deemed the fiscal year,) make a full settlement with the territorial auditor, and pay over to the territorial treasurer, all funds which shall have come into their hands as county treasurers and ex officio tax receivers, for the use and benefit of the territory; taking therefor a receipt, which receipt he shall forthwith file with the territorial auditor, and any county treasurer who shall fail, neglect or refuse to appear at the office of the territorial auditor and treasurer, on the days above specified, or within fifteen days

HeinOnline -- 1866 36 1866

thereafter, and then and there settle and make payment as required by this act, shall forfeit all fees, per centage and mileage, which would otherwise be due him on such settlement.

SEC. 85. Each assessor, treasurer, ex-officio tax receiver, ex-officio license collector, sheriff, and district and prosecuting attorney shall, on the Saturday next preceding the first Monday in each year, attend at the office of the county commissioners for the purpose of making a settlement with them on account of all transactions connected with the revenue for the year ending on that day, and each and every such officer, on going out of office, shall deliver to his successor in office all the public money, books, accounts, papers and documents appertaining to his office and in his possession, taking a receipt therefor.

SEC. 86. The treasurers of the several counties of this Territory shall be allowed the following per centages, which shall be in full for their services as treasurer, and ex-officio tax receiver, and in no case except as in this act provided, shall they receive any fees or per centage to their own use, to wit: On collection and receiving of taxes on real and personal property, and license, they shall be entitled to receive and retain the following per centages, to wit:

On the first five thousand dollars, twelve and one-half per cent.

On the second five thousand dollars, eight per cent., and on all amounts over ten thousand dollars, three per cent.

Four per cent for receiving and paying out all money other than school and poor taxes.

For every license issued, one dollar, to be paid [by] the party applying for the same.

For every mile traveled going and returning in making settlement with the Territorial Auditor and Treasurer, twenty-five cents.

For levying on and selling property for taxes, the same fees as are allowed the sheriff, to be paid by delinquent.

SEC. 87. All acts and parts of acts inconsistent or in conflict with this act, relating to revenue are hereby repealed.

SEC. 88. This act shall take effect and be in force from and after the first day of February, and year A. D. eighteen hundred and sixty seven.

A. E. MAYHEW,
Speaker of the House of Representatives.
CHAS. S. BAGG,
President of the Council.

Approved, December 14, 1866. GREEN CLAY SMITH,
Governor.

FUNDING LAW.

CHAPTER III.—*An Act to provide for the Funding of the Debt of Montana Territory.*

Be it enacted by the Legislative Assembly of the Territory of Montana as follows:

HeinOnline -- 1866 37 1866

SEC. 1. That all the Warrants of the Territory of Montana outstanding and unpaid on the 1st day of February, A. D. 1867, shall be taken up on or before June 1st, 1867, and the bonds herein provided for, issued in lieu thereof.

SEC. 2. The Treasurer of the Territory of Montana is hereby authorized to issue on the credit of Montana Territory, coupon bonds for the purposes set forth in this act, to an amount not exceeding fifty thousand dollars, or so much thereof as may be necessary, redeemable at the pleasure of the Territory, after two years, and payable five years from date, and bearing interest at the rate of fifteen per cent. per annum, and the bonds herein authorized shall be the denomination of fifty dollars and one hundred dollars each.

SEC. 3. Any holders of Territorial Warrants outstanding and unpaid at the time aforesaid, shall present the same to the Territorial Auditor, who shall certify the amount thereof, together with the interest accrued thereon to said holder, and the Territorial Treasurer, upon such certificate, shall issue to said holder bonds to the amount of such certificate: *Provided*, That said Warrants shall be issued in some multiple of fifty dollars, and if any amount so held shall be of a sum less than fifty dollars, or less than the amount of any bond of higher denomination, the holder shall make up the amount in money, so as to equal the amount of the face of the bond to be issued.

SEC. 4. The coupon bonds authorized to be issued by this act shall be in such form as the Governor of the Territory may direct, and shall bear the signatures of the Auditor and Treasurer of the Territory, and shall be sealed and countersigned by the Secretary of the Territory, and the coupons shall be signed by the Auditor and Treasurer. Each bond shall be registered by the Treasurer in a book to be kept for that purpose, which book shall show the amounts of the bonds, to whom issued and the date of the issue, and the Auditor shall keep an account of the amounts certified by him in lieu of the Warrants hereby called in, and shall report the same to the next Legislature, and preserve the redeemed Warrants subject to its order.

SEC. 5. The faith of the Territory of Montana is hereby solemnly pledged for the payment of the interest and redemption of the principal of the bonds authorized to be issued by this act.

SEC. 6. That if any person or persons shall falsely make, forge, counterfeit or alter, or cause or procure to be falsely made, forged, counterfeited or altered, or shall wilfully aid or assist in falsely making, forging, counterfeiting or altering any bonds or coupons, authorized to be issued under the authority of this act, or shall pass, utter, publish or sell or attempt to pass, utter, publish or sell, or bring into this Territory with intent to pass, utter, publish or sell, or shall have or keep in possession, or conceal with intent to utter, publish or sell, and such false, forged, counterfeited or altered bond or coupon with intent to defraud any body corporate or politic, or any other person or persons whatsoever, every person so offending shall be deemed guilty of felony, and shall, on conviction thereof, be punished by fine not exceeding five thousand dollars, and by imprisonment and confinement to hard labor not exceeding fifteen years, according to the aggravation of the offence.

HeinOnline -- 1866 38 1866

SEC. 7. For the purpose of carrying into effect the provisions of this act, the sum of one thousand dollars is hereby appropriated out of any monies in the Territorial Treasury not otherwise appropriated.

SEC. 8. The Treasurer of the Territory of Montana shall pay in lawful money of the United States on the 1st day of June, of the year 1868, the interest on the amount of the bonds so issued, and annually thereafter upon presentation at his office of the coupons, which shall show the amount of interest due on each, and the number of the bond to which they refer, and the amount of interest so paid, shall appear in his annual report to the Legislature

SEC. 9. The Territorial Treasurer shall reserve and set aside twenty-five per cent of all monies received in the Territorial Treasury for the purpose of meeting the payment of the interest accruing on the bonds issued, and all surplus remaining of the twenty-five per cent. so reserved after the interest shall be paid as hereinbefore provided, shall be set aside as a sinking fund for the reduction of the principal as provided in Section 10 of this act.

SEC. 10. Whenever, after the expiration of two years, from the issuing of the bonds herein authorized, the sum in the Territorial Treasury shall exceed the sum of fifteen thousand dollars, and from time to time thereafter the Treasurer shall cause notice to be published in three newspapers of Montana Territory, that he will, in ninety days from the date of such notice, redeem certain bonds, giving their numbers, preference being given to the oldest issue, and if at the expiration of the time of notice so given, the holder or holders shall fail or neglect to return the same, interest thereon shall cease; but the Treasurer shall at all times thereafter be ready to redeem the same on presentation.

SEC. 11. All acts and parts of acts in conflict with this act are hereby repealed.

Approved, December 14th, 1866.

LICENSE LAW.

CHAPTER IV—*An Act, Entitled an Act concerning Licenses.*

Be it enacted by the Legislative Assembly of the Territory of Montana, as follows:

SECTION 1. There shall be levied and collected by the tax collector a license tax as follows:

First—From each billiard table kept for public use, sixteen dollars per quarter.

Second—From the manager or lessee of every theatre, five dollars per day, or fifty dollars per month, and for each exhibition of serenaders opera or concert singers, minstrels, sleight-of-hand performers, legerdemain and all other shows and exhibitions, the same payment for license as required for theatrical performances.

Third—All dance houses or hurdy-gurdy houses, shall pay ten dollars per day, or one hundred dollars per month.

HeinOnline -- 1866 39 1866

Fourth—For each and every insurance company transacting business in this territory, the sum of eighty-dollars per year.

Fifth—From each pawn broker, twenty-five dollars per quarter.

Sixth—From each keeper of an intelligence office, twenty-five dollars per quarter.

Seventh—From each assayer of minerals, or quartz rock, ten dollars per quarter.

Eighth—Each professional man, before practicing as such, all lawyers, dentists, physicians, surgeons and all other professions, shall pay a license of sixteen dollars per annum.

SEC. 2. All keepers of livery and feed stables shall pay a license of fifteen dollars per quarter; all keepers of hay yards, or corrals for feeding stock, or selling hay, shall pay a license of ten dollars per quarter; all ranchmen who keep or herd stock for hire shall pay a license of ten dollars per quarter.

SEC. 3. Licenses shall be obtained by the persons, private associations, incorporations, doing business in this territory, engaged in any one or more of the following occupations, to wit: In buying or selling foreign or inland bills of exchange or in loaning money at interest, or in buying or selling notes, bonds, or other indebtedness of private persons or territorial, county, or city stocks or indebtedness, or stock of incorporated companies, or in buying or selling gold dust or gold or silver bullion or gold or silver coin; keeper of savings banks, or engaged as common carriers in transmiting or carrying gold dust or gold or silver coin or bullion from one place to another for hire or profit, or engaged in receiving general or special deposits of gold dust, gold or silver coin, or bullion, including all brokers, shall be divided in four classes, as follows:

First—Those doing business in the aggregate to the amount of one hundred and fifty thousand dollars per quarter, shall constitute the first class, and shall pay a license of seventy-five dollars per quarter.

Second—Those doing business to the amount of one hundred thousand dollars, and less than one hundred and fifty thousand dollars per quarter shall constitute the second class, and shall pay a license of sixty dollars per quarter.

Third—Those doing business to the amount of fifty thousand dollars and less than one hundred thousand dollars per quarter, shall constitute the third class, and shall pay a license of forty-five dollars per quarter.

Fourth—Those doing business amounting to less than fifty thousand dollars per quarter shall constitute the fourth class and shall pay a license of thirty-five dollars per quarter. Said amounts to be paid to the collectors of taxes in the county in which the party applying therefor desires to or does transact any or all of the occupations specified in this section, and a separate license shall be obtained for each branch or separate house of business in the same county.

SEC. 4 All bankers, or such persons or corporations as are engaged in buying and selling foreign or domestic bills of exchange, or drafts, shall be divided into four classes, as follows:

HeinOnline -- 1866 40 1866

Those doing business to the amount of three hundred thousand dollars per month, shall constitute the first class, and shall pay a license of sixty five dollars per month.

All those doing business between the sums of two and three hundred thousand dollars per month shall constitute the second class and shall pay a license of fifty dollars per month.

All those doing business between the sums of one and two hundred thousand dollars per month shall constitute the third class and shall pay a license of forty dollars per month.

And all those doing business in any sum less than one hundred thousand dollars per month shall constitute the fourth class and shall pay a license of thirty-five dollars per month.

SEC. 5. Every person who has a fixed place of business, who may deal in goods, wares or merchandize, wines or distilled liquors, drugs or medicines, jewelry, or ware of precious metals, shall pay a license as follows:

Those who are estimated to make average monthly sales of forty thousand dollars or more, shall constitute the first class.

Those whose monthly sales are estimated between twenty-five and forty thousand dollars shall constitute the second class.

Those whose monthly sales are estimated betwen ten and twenty-five thousand dollars, shall constitute the third class.

Those whose estimated monthly sales are between three and ten thousand dollars shall constitute the fourth class.

Those whose monthly sales are estimated less than three thousand dollars shall constitute the fifth class.

The first class shall pay a license of fifty dollars per quarter.

The second class shall pay a license of forty dollars per quarter.

The third class shall pay a license of thirty dollars per quarter.

The fourth class shall pay a license of twenty-two dollars per quarter.

The fifth class shall pay a license of fifteen dollars per quarter:

Provided, that the sales of liquors and wines licensed under this section shall not be in less quantities than one gallon, and no license shall be issued for less than three months.

All in-door auctioneers shall procure a license, and shall pay therefor the sum of ten dollars per month, and all auctioneers who shall sell upon the streets of any town in this territory, goods, wares or merchandize, horses, mules, cattle or other live stock, shall pay a license of twenty-five dollars per month:

Provided, No license shall be required for sale of goods on execution, or sheriff's sale under attachment or order of any court.

SEC. 6. All keepers of houses of entertainment, boarding houses, inns and taverns where no intoxicating liquors shall be sold, shall pay a license as follows:

First—Those whose estimated quarterly receipts do not exceed one thousand dollars, four dollars.

Second—Those whose estimated quarterly receipts exceed one thousand and do not exceed two thousand dollars, eight dollars.

Third—Those whose estimated quarterly receipts exceed two thousand dollars and do not exceed three thousand dollars, twelve dollars, and for

HeinOnline -- 1866 41 1866

each additional thousand dollars of estimated receipts, shall be added the sum of four dollars per quarter.

SEC. 7. All persons who dispose of any spirituous or malt or fermented liquors in quantities of less than one gallon shall, before the transaction of such business, obtain license for which they shall pay thirty dollars per quarter: *Provided*, such person shall not carry on such business within two miles of any town or city, such license shall be ten dollars per quarter.

SEC. 8. Every travelling merchant, hawker or pedler who shall carry a pack or trunk, and shall sell goods, wares and merchandise shall pay a license of ten dollars per month, and every such person who shall deal in provisions not raised in this Territory shall pay a license of eight dollars per month.

SEC. 9. Every person who shall bring or procure to be brought into this Territory, one or more wagons, or one or more pack animals loaded with goods, wares or merchandise, or provisions not raised by himself in this Territory, or shall bring or procure to be brought into this Territory upon any steamboat or other water craft navigating the waters of this Territory goods, wares or merchandise, or provisions, and shall sell the same or offer the same for sale, or consign the same to or leave the same with any commission merchant, auctioneer or any other person for sale or on commission, or on storage and commission, shall be deemed, for the purposes of this act, a transient merchant, and shall pay a license as follows:

First—For each wagon, loaded as aforesaid, if such load do not exceed in value the sum of one thousand dollars, five dollars. If such load does exceed in value the sum of one thousand dollars, then one half of one per cent on such excess shall be added.

Second—For each pack animal loaded as aforesaid, if the value of such load do not exceed two hundred dollars, twenty-five cents. If such load do exceed in value the sum of two hundred dollars, then one-half of one per cent. of the value of such excess shall be added.

Third—Each transient merchant bringing or procuring to be brought, any goods, wares or merchandise, or provisions, into this Territory upon any steamboat or other water craft, who is required to pay license under the provisions of this Section, shall pay for such license a sum equal to one-half of one per cent. on the value of such goods, wares or merchandise, or provisions: *provided*, That any person having once paid his proper license according to the provisions of this act, shall have a right to sell any goods for the sale or disposal of which such license shall have been procured, either at wholesale or retail.

SEC. 10. Any person bringing or procuring to be brought into this Territory any drove or droves of cattle or horses, mules, asses, sheep or swine for sale after the first day of September of each year, shall pay a license tax as follows:

For each head of cattle, horses, mules or asses, fifty cents.

For each head of swine, twenty-five cents.

For each sheep, ten cents.

Such license shall be collected in the county where such stock is located.

HeinOnline -- 1866 42 1866

SEC. 11. If any person who under the provisions of section nine and ten of this act, is required to pay a license tax mentioned therein, shall, without first having procured and paid such license, sell any goods, wares, merchandise, or stock, mentioned in either of such sections, the person or persons purchasing, shall be responsible for the license tax thereon, and shall pay the same to the tax collector of the county in which such transaction was made, upon demand of such tax collector, and if such person fail or refuse to pay the same, then such tax collector shall levy upon and sell sufficient of such goods, wares or merchandise or stock, to pay such license tax, together with costs. Such seizure and sale to be made in the manner prescribed by law for the collection of delinquent tax, *provided*, that if any person having the custody of goods or stock liable to levy and sale under the provisions of this act shall pay the license tax due from the owners of such goods, or stock, then he shall have a lein upon such property for the amount of such license tax so paid together with reasonable compensation for trouble incurred in the premises and may retain such amount out of any monies that may be or come into his hands, belonging to such person, for whom such license tax was paid.

SEC. 12. Every brewer or manufacturer of malt, or spirituous liquors, and every rectifier of spirituous liquors, or manufacturer of pop, beer or drinks put up in bottles, shall pay a license of ten dollars per month.

SEC. 13. Every person who shall keep any banking game, or other game of chance, or gaming table wherein any money or representation of money, is used, bet, or ventured at any game of chance or hazard not prohibited by the laws of this territory, shall pay a license of fifty dollars per month for each house so kept.

SEC. 14. Every butcher shall pay a license of five dollars per month; *provided*, that any butcher carrying on business more than two miles from any town or city, and whose monthly receipts are less than one thousand dollars, shall pay five dollars per quarter.

SEC. 15. Every keeper of a picture gallery, daguerreotypist, ambrotypist, photographist or other artist, shall pay a license of ten dollars per quarter

SEC. 16. Be it enacted that all incorporated roads, bridges, or ferries or water companies, or any other incorporated company not specified in the provisions of this bill, or any other company or association of persons taking or receiving toll, whose annual income shall reach the sum of two thousand dollars over and above all expenses, and not to exceed five thousand dollars, shall pay a tax of twenty dollars per quarter, and those whose annual income shall reach five thousand dollars, and not to exceed ten thousand dollars, shall pay a tax of forty dollars per quarter, and those whose annual income shall reach ten thousand dollars and not to exceed twenty thousand dollars, shall pay a tax of eighty dollars per quarter, and all those whose annual income shall exceed twenty thousand dollars, and not exceed forty thousand dollars, shall pay a tax of one hundred and twenty dollars per quarter, and all whose annual income shall exceed forty thousand dollars shall pay tax of two hundred dollars per quarter.

SEC. 17, Be it further enacted, That it shall be the duty of any cor

HeinOnline -- 1866 43 1866

porator to cause any president, secretary, chief officer, or directors of said company or companies, four times in each year to file with the treasurer of the county in which said company is located doing business or in which they have their office, a sworn statement of all their receipts and expenditures, and it shall be the duty of said treasurer to examine said report, and shall have power to hear testimony for and against the same, and if he approve of the same, he shall proceed to collect the tax imposed by this act upon said company or corporation as provided by law in other cases.

SEC. 18. Be it further enacted, That any person required by the provisions of section 17 of this act, to file the statement therein required, who is to swear to the same, knowing that said report is false or untrue in any material part, such person shall be deemed guilty of perjury, and upon conviction shall be imprisoned in the county jail or territorial prison not less than three nor more than five years.

SEC. 19. Each tax collector shall make diligent inquiry and examination as to all persons in his county liable to pay license required by the provisions of this act, and it shall be his duty to require each person to state under oath or affirmation the amount of business which he or the firm of which he is a member, or for which he is agent or attorney, or the corporation or association of which he is president or other officer, have done within the last preceding month or quarter, and in all cases where an under estimate has been made, the person procuring the same shall be made to pay double license for the next ensuing month or quarter. It shall be the duty of such tax collector to require all persons required to pay license under this act, as traveling merchants, as well as such persons as shall purchase or receive goods wares or merchandise of such merchants, to make a statement under oath or affirmation as to the amount and value of all goods wares and merchandise brought or procured to be brought into this Territory or purchased or received by them, as well as the disposition thereof. All licenses procured under this act shall authorize the party procuring the same to transact and carry on business as provided in said licenses, within the county in which such license was obtained.

SEC. 20, Any person or persons who shall commence or continue to transact any business or to carry on any business, trade, occupation or profession for the transactions of which a license is required by this act without a proper license as herein required shall, upon conviction thereof, be deemed guilty of a misdemeanor and be fined not less than ten dollars nor more than one hundred dollars, and whenever it shall appear to any justice of the peace, by the affidavit of any tax collector that such offence has been committed, such justice shall issue his warrant for the arrest of such delinquent and like proceeding shall be had thereon as in cases of misdemeanors prescribed by law and such tax collector may proceed to recover the amount due for such license, in a civil action against such delinquent, before any court of competent jurisdiction within such county, which action shall be prosecuted in the name of the Territory of Montana, and a writ of attachment may issue without bond given by the plaintiff against the property.

SEC. 21. Licenses may be granted under the provisions of this act for

HeinOnline -- 1866 44 1866

one year, or less, at the option of the applicant, provided no license shall be granted for a less time than mentioned in the rates of assessment of license in this act.

SEC. 22. Upon the trial of any criminal action provided for by this act, the defendant shall be deemed not to have procured the proper license unless he either produces it or proves that he did procure it, but he may plead in bar of the criminal action, recovery and payment by him in a civil action of the proper license money, damages and costs, the money collected for license provided for in this and the preceding section, shall be paid into the county treasury, sixty per cent, for the use of the county, and forty per cent for territorial purposes.

SEC. 23. An act, entitled an act, to amend an act entitled an act concerning licenses, approved, February 9th, 1865, which act was approved April 13th, 1865, and all other acts or parts of acts inconsistent with the provisions of this act is hereby repealed.

SEC. 24. This act shall take effect and be in force from and after the first day of March, 1867.

Approved Dec. 15, 1866.

JUDICIAL DISTRICTS.

CHAPTER V.—*An Act defining the Judicial Districts of this Territory, assigning the Judges, fixing the time and place of holding the Supreme and District Courts and limiting their jurisdiction, and for other purposes.*

Be it enacted by the Legislative Assembly of the Territory of Montana as follows:

SEC. 1. This Territory is hereby divided into three Judicial Districts, as follows:

The first judicial district shall embrace the counties of Madison, Beaver Head and Gallatin.

The second judicial district shall embrace the counties of Deer Lodge, Missoula, Edgerton, Meagher and Jefferson.

The third judicial district shall embrace the counties of Chouteau, Vivion and Big Horn.

SEC. 2. The Hon. H. L Hosmer, Chief Justice of the Supreme Court, is hereby assigned to the first judicial district.

The Hon. L. P. Williston, Associate Justice of the Supreme Court, is hereby assigned to the second judicial district.

The Hon. L. E. Munson, Associate Justice of the Supreme Court, is hereby assigned to the third judicial district.

SEC. 3. There shall be a term of the Supreme Court of this Territory held at the Territorial seat of government annually, commencing on the first Monday in August, and such term may be adjourned from time to time as such Supreme Court may order and direct by an entry made on the records of said court.

HeinOnline -- 1866 45 1866

SEC. 4. The terms of the first judicial district court shall commence at the county seat of Madison county on the first Mondays of February, June, and October.

In Beaver Head county on the first Mondays in May and September in each year

In Gallatin county on the first Monday in April of each year.

SEC. 5. The terms of the second judicial district shall commence as follows:

At the county seat of Deer Lodge county, on the first Mondays of April and October in each year.

In Missoula county, on the third Mondays of September of each year,

In the county of Edgerton on the first Mondays of March, July and November.

In the county of Meagher on the first Mondays of June and January in each year

In the county of Jefferson, on the first Monday of December of each year.

SEC. 6. The terms of the third judicial district shall be held at the county seat of Chouteau county, on the first Mondays of June and December in each year.

In the county of Big Horn, on the first Monday of April in each year.

That the county of Vivion be, and the same is hereby attached to Big Horn county for judicial purposes.

SEC. 7. The district attorneys of the several judicial districts heretofore existing within this Territory, shall, until after the next general election, to be held in this Territory and until their successors are duly elected and qualified, continue to be and act as such district attorneys within the counties comprising the judicial districts, for which they were originally elected.

SEC. 8. The first six days of every term of said district courts holden in the counties heretofore named, or so much thereof as may be necessary shall be appropriated to the trial of causes arising in said district courts respectively, under the constitution and laws of the United States.

SEC. 9. Any judge of a judicial district in this Territory may hold a term of court in any District in this Territory in case of vacancy or inability occurring through sickness, death, disqualification, resignation or absence from the district or Territory, of the judge properly assigned to that particular district; and a written request from the judge of the district in which the court is to be held, or from the Governor of the Territory, to be entered on record of said court, shall be sufficient authority to any judge for holding said court, and from the time of the service of said notice upon him, he shall have full power to act as judge of said district, during such absence, sickness or disqualification, and do any act that may be necessary and proper for the holding of said courts, including the appointment of a clerk, and the designation of a seal in all cases when there is no clerk or seal.

HeinOnline -- 1866 46 1866

SEC. 10. Whenever it shall so happen that the judge of a district court shall not attend at the commencement of the session of said court, or at the time appointed on any adjournment thereof, to open and adjourn the said court in person, the judge may, by a written order to the clerk adjourn the court from time to time, as the case may require, to any time or times antecedent to the next stated team of said court, and all suits, actions, writs, processes, recognizances, and other proceedings pending in such court, shall have day and be returnable to, and heard, tried and determined, at such adjournments or adjourned terms, in the same manner and with the same effect, as if the said court had been duly opened, and held at the commencement of such session, or any other day appointed therefor, and all persons bound or required to appear at such court, either as jurymen, witnesses, parties or otherwise, shall be bound and required to attend at such adjournments accordingly: *Provided*, That in such absence of the judge the clerk may adjourn the court from day to day without order, for any period not exceeding one week.

SEC. 11. Each judicial district shall have an appropriate seal, to be procured by the clerk thereof, under the direction of the judge, and the clerk of the supreme court shall procure an appropriate seal for the same under the direction of the judges thereof, or a majority thereof.

SEC. 12. It shall be the duty of the Judges of the several districts of this Territory to appoint a clerk of said district court within and for each county in his or their said districts, in which a term of court is required by this act to be held; which clerk shall be a citizen of the Territory, and an actual resident of the county in and for which he is appointed and shall before entering upon the duties of his office, give and execute to the Territory of Montana a bond in the penal sum of five thousand dollars, with two or more sufficient securities, to be approved by the Judge of said court, conditioned that he will well and faithfully perform all duties enjoined upon him by the laws of this Territory as such clerk, and will faithfully pay over and account for all sums of money received by him in his official capacity which he shall be required to pay or account for by any order of said court or judge, or the laws of this Territory, which bond shall be filed with the treasurer of the county in which such appointment is made, who shall safely keep and preserve the same, and every person injured by any official act of said clerk may in the name of the Territory of Montana, to the use and benefit of such injured person maintain suit thereon in any court of competent jurisdiction.

SEC. 13. In all suits hereafter brought in any district court of this Territory, whereby the summons or process is by existing laws required to be issued to and made returnable to the next or any subsequent term of said court, it shall be the duty of the clerk of said district courts, to issue said summons or process in all cases returnable to a term of such court as prescribed by this act and not otherwise, and any such summons or process issued by any such clerk or other person authorized by law to issue the same, and made returnable to any other term or pretended term of said court, other than the terms prescribed by this act, shall be null and void.

SEC. 14. Any such clerk of a district court, or other person authorized by law, to issue the summons or process as prescribed in the preceding

HeinOnline -- 1866 47 1866

section, who shall make the same returnable to a term or pretended term not prescribed or authorized by this act or shall command any defendant or defendants to appear and answer at any other than a term prescribed by this act, shall be guilty of a misdemeanor, and for every such offense shall be fined in any sum not less than twenty-five nor more than one hundred dollars, and may be imprisoned in the common jail of the county until such fine and costs are paid, which fine and imprisonment may be imposed by any Justice of the Peace of the county wherein the offense was committed and who shall have full power to hear and determine the same in a summary manner, as in other cases of misdemeanors.

SEC. 15. All judgments rendered, fines, penalties, or forfeitures imposed, and all other proceedings had or done at any such pretended district court, held at a term, time, or place, other than the terms of court presented by this act, shall be null and void, and any sheriff or other officer or person who shall pretend or attempt to execute any judgment, sentence or process, issued in pursuance to any order, judgment or decree of such court, held in violation of the provisions of this act shall be guilty of misdemeanor, and for every such offense, upon conviction therefor, shall be fined in any sum not less than one hundred dollars or more than five hundred dollars, and for the non payment of any such fine, may be imprisoned in the county jail of the county until the said fine and cost are paid. And in addition thereto, shall be liable on his or their official bond, for all damages occasioned to any person or persons, by reason of such official acts, in the execution, or attempted execution of any such void judgment, sentence or decree, or process for the enforcement of the same.

SEC. 16. Any justice of the peace of the county in which the offence or misdemeanor prescribed in the preceding section, was committed, shall have jurisdiction thereof and shall hear and determine the same in a summary manner, as in case of other misdemeanors

SEC. 17. The preceding sections shall not apply to any proceedings of quo warranto mandamus, injunction or other special proceedings, when, by existing law the judge is authorized to hear and determine the same in vacation.

SEC. 18. There shall be allowed to each judge of a district court holding his term under this act, a docket fee of five dollars in every civil action brought in any district court held under the provisions of this act which fee shall be paid to the clerk of said court at the time of the filing of the complaint, by the plaintiff, and it shall be the duty of said clerk to pay the same over to the judge holding the court in which such action is brought; and for any failure of said clerk to collect said fee and pay it over to, or account to said judge, he and his securities on his official bond shal be liable therefor.

SEC. 19. When any Plaintiff shall have advanced the docket fee, as prescribed in the preceding section, and shall recover judgment against the defendant in said suit, it shall be the duty of said clerk to tax the said docket fee as other costs against such defendant, and when collected shall receive and pay the same back to the plaintiff or other person advancing the same.

SEC. 20. In all cases of appeals from any probate or justice's court to

HeinOnline -- 1866 48 1866

any district court established by this act, it shall be the duty of the clerk of said court upon the rendition of final judgment therein to tax against the unsuccessful party, for the benefit of the judge holding the term, a docket fee of five dollars, which shall be taxed and collected as other costs, and when so collected shall be received by said clerk, and paid over to the said judge as provided in the preceding section.

Sec. 21. In all criminal cases for a violation of the laws of this Territory, or in which the Territory is a party, and in which judgment or conviction therein shall be had against any defendant, at any term of court held under this act, it shall be the duty of the clerk of the court wherein such judgment or conviction is had, to tax against such defendant, a like docket fee of five dollars which shall be collected as other costs, and when collected, shall be paid over to the judge holding the term at which such conviction was had, as provided in the preceding section.

Sec. 22. It shall be the duty of the county commissioners of every county in this Territory in which a district court is held in accordance with the provisions of this act, to cause to be furnished for the use of said court and the clerk thereof a suitable court house and clerk's office with all necessary furniture, seats and desks for the convenience of the said court and clerk thereof. They shall also provide said court and the clerk thereof with the necessary fuel, records and stationery of every kind, and with all necessary books or paper cases for the preservation of the records, books and papers pertaining to said court, or the office of the clerk thereof, and upon their failure so to do, it shall be the duty of the district judge or the court thereof, to issue an order requiring them to furnish buildings and articles designated herein; or to appear before him at a day or time therein stated, and show cause why they have not, or should not comply with such order; and upon the failure of said county commissioners to appear and show sufficient cause for such failure or neglect, it shall be the duty of said district judge to commit them to the common jail of the county until they comply therewith.

Sec. 23. All laws, acts and parts of acts conflicting with the provisions of this act, be, and the same are hereby repealed.

Sec. 24. This act shall take effect and be in force from and after its passage.

Approved, December 15, 1866.

PROHIBITING CERTAIN GAMES.

CHAPTER VI.—*An Act prohibiting certain Games.*

Be it enacted by the Legislative Assembly of the Territory of Montana, as follows:

SEC. 1. Every person who shall open, keep, deal, set up or play at any game, gambling table or gambling device commonly known as ten die game, three card monte, three trick rush, thimble rig, Havanna lottery, black and red, or who shall induce, entice or solicit any person or persons, to play at or bet at, upon or against, any game, gambling table

HeinOnline -- 1866 49 1866

or gambling device mentioned in this section, or who shall by means of any such game, gambling table or gambling device, win or obtain any money, gold dust, bullion or other property of any value, from any person or persons, shall, on conviction thereof, be punished by fine not less than ten nor more than one hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment.

Sec. 2. Every person who shall knowingly permit any game, gambling table or gambling device mentioned in the first section of this act, to be opened, kept, dealt or set up, or played at, or used for the purpose of gambling in any house, building, shed, booth, tent, shelter, lot or other premises to him or her belonging, or by him or her occupied, or of which he or she has, at the time, the possession or control, shall, on conviction thereof, be adjudged guilty of a misdemeanor and punished by fine not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than one nor more than ninety days, or both such fine and imprisonment.

Sec 3. Any person who shall knowingly lease or let to another any house, building, shed, booth, tent, shelter, lot or any room in any house or building, or any part or portion of any such room, for the purpose of opening, keeping, dealing, setting up or playing at any game, gambling table or gambling device, mentioned in the first section of this act, shall, upon conviction thereof, be adjudged guilty of a misdemeanor, and punished by fine not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than one day or more than ninety days, or by both such fine and imprisonment.

Sec. 4. Every person acting or appearing as master or mistress, or having the care, use or management, for the time, of any game, gambling table or gambling device, mentioned in the first section of this act, or who shall appear or act as the master or mistress, or have the care, use or management of any room, house, building, shed, booth, tent, shelter, lot or other premises, in which such game, gambling table or gambling device shall be opened, kept, dealt, set up or played at, for the purpose of gambling, shall be deemed to be a keeper thereof.

Sec. 5. No person shall be incapacitated or excused from testifying concerning any offence committed by another against any of the provisions of this act, by reason of him or her having opened, dealt, kept, set up, or played at, or betted upon any game, gambling table or gambling device mentioned in this act, nor by reason of him or her having induced or enticed any person or persons to play at or bet at, upon or against any such game, gambling table or gambling device, nor by reason of him or her having permitted any such game, gambling table or gambling device to be used, kept, dealt, set up or played at, in any house, building, room or other premises to him or her belonging, or by him or her occupied or controlled, nor by reason of him or her having knowingly leased or let any house, room, building or other premises, or part or portion thereof, to any person for the purpose of opening, keeping, dealing or playing at any such game; but the testimony so given shall in no case be used against him or her.

Sec. 6. If any person who shall be convicted of a violation of any of the provisions of this act and sentenced to pay a fine, shall fail or refuse

HeinOnline -- 1866 50 1866

to pay the same together with the costs of the prosecution, the court, before whom such person shall have been convicted, shall forthwith issue execution for the amount of such fine and costs, against the property of such person, and the officer to whom such execution shall be directed may satisfy the same out of the goods and chattels of the person or persons who appeared or acted as master or mistress, or had the use, occupation or control of the room or premises in which such offence was committed at the time of the commission thereof, and out of the furniture and goods, wares and merchandise then belonging or deposited in such room or premises, and the person so convicted shall be held in custody or imprisoned in the county jail until such execution shall be satisfied, provided, that he shall not be held or imprisoned more than one day for every five dollars of such fine and costs.

SEC. 7. Any person who shall lose any money, gold dust, gold or silver bullion, or other property, at any game, gambling table, or gambling device mentioned in the first section of this act, may recover the same or the full value thereof, in a civil action, which action may be prosecuted against any or all of the persons who kept, dealt, conducted or managed the game, gambling table or gambling device at which the plaintiff lost, as well as against any person or persons who induced, enticed or solicited the plaintiff to bet upon or against such game or gambling device, at or previous to the time of his losing any money or other property at such game or gambling device; also against the owner or owners, lessee or lessees, master or mistress, or any person or persons whomsoever, having the care, use or management of the house, building, room or other premises in which the plaintiff lost such money or other property.

SEC. 8. The plaintiff at the time of filing his complaint in any action provided for by the foregoing section, or at any time thereafter, may have the property of the defendant or defendants in such action, attached as security for the satisfaction of any judgment that may be obtained, unless the defendant or defendants give security to pay said judgment, and the clerk of the court, or Justice of the Peace, before whom such action shall be brought, upon receiving and filing an affidavit, by, or on behalf of the plaintiff, which affidavit shall show that a right of action has accrued to the plaintiff against the defendant or defendants in such action, by or under the provisions of the seventh section of this act, shall issue the writ of attachment and such writ of attachment and all proceedings had thereon, shall be executed in conformity with the laws of this territory relating to attachments in civil cases: *Provided*, that no property shall be exempt from attachment, levy and execution, to satisfy any judgment obtained under the provisions of this act.

SEC. 9. All acts and parts of acts prohibiting certain games and all acts upon the subject of gambling, and all acts and parts of acts inconsistant with the provisions of this act, heretofore in force within this territory are hereby repealed.

SEC. 10. This act shall take effect and be in force from and after its passage and approval by the Governor.

Approved, November 21, 1866.

HeinOnline -- 1866 51 1866

CRIMINALS TO PERFORM LABOR.

CHAPTER VII.—*An Act Requiring Criminals to perform Labor.*

Be it Enacted by the Legislative Assembly of the Territory of Montana, as follows:

SECTION 1. Whenever any person or persons in this Territory shall have been sentenced to imprisonment for any term, for the commission of any crime, misdemeanor or felony against the laws of this Territory, or in violation of any city ordinance of any incorporated city in this Territory, by a judgment of any court or judge thereof, justice of the peace or municipal court, or shall have been committed to jail for any term in default of the payment of any fine or penalty imposed by any such courts or justices, the person or persons so imprisoned may be required and compelled to work and perform labor during his or their respective terms of imprisonment.

SEC. 2. The county commissioners of any county of this Territory are hereby authorized and empowered, to enforce the provisions of this act in their respective counties, and to employ any criminal or criminals committed to the jails of their respective counties, as referred to in the preceding section, in the performance of any work or labor, or in any occupation or trade as to them shall seem proper, such work to be carried on under the superintendence of any sheriff, deputy sheriff or constable of such county, as the said commissioners may designate; the benefits, profits and results of such work and labor to be enjoyed and used, are to accrue to the county in which such criminal or criminals may be confined.

Sec. 3. The city council or authorities of any incorporated city in this Territory, are also authorized to work or employ any prisoner or prisoners committed to jail for the violation of any city ordinance of such city, or in default of the payment of any fine or penalty imposed for the violation of any ordinance of such city, such labor to be performed under the supervision of any marshal, constable or police officer of such city, as the authorities may designate; the profits and results of such labor to accrue to such city All incorporated cities and towns of this Territory are hereby granted the full and complete privileges of this act.

Sec 4. The officers herein mentioned are fully authorized and empowered to secure and fasten with chains or other device, any prisoner or prisoners in the performance of any such labor, so as to prevent the escape of such prisoner or prisoners.

Sec. 5. Any person or persons who may be put to labor or assigned work to perform, under the provisions of this act, who shall be refractory and unruly, who shall refuse to perform the task assigned, who shall wilfully injure or destroy any material given to be worked upon, or any tool, implement or instrument whatever with which to perform such labor or who shall perform such task or tasks negligently, may be placed in solitary confinement and fed upon bread and water, or subjected to such like punishment by the officers having the same in charge, until the said prisoner or prisoners shall agree to do and perform the labor assigned in a satisfactory manner and with due diligence and care.

HeinOnline -- 1866 52 1866

Sec. 6. This act to take effect and be in force from and after its passage.

Approved, December 1st, 1866.

CHANGE OF VENUE.

CHAPTER VIII.—*An Act Providing for a Change of Venue in Civil and Criminal Cases.*

IN CIVIL ACTIONS.

Be it enacted by the Legislative Assembly of the Territory of Montana as follows:

SECTION 1. A change of venue may be awarded in any civil suit in any district court of this Territory, for any of the following causes:

First—That the judge is interested or prejudiced, or is related to, or has been of counsel in the cause for either party.

Second—That the opposite party has an undue influence over the mind of the judge.

Third—That the inhabitants of the county are prejudiced against the applicant.

Fourth—That the opposite party has an undue influence over the inhabitants of the county.

Fifth—In any other civil cause, when the court shall be satisfied that such change will be for the interest of both parties.

SEC. 2. No change of venue shall be allowed to a defendant in any civil cause unless the application therefor be made before the return day of the summons, until he shall have filed his answer to the merits.

SEC. 3. Any party in such cause may present to the court or judge thereof in vacation, a petition setting forth the cause of the application for a change of venue, and shall annex thereto an affidavit to the truth of the petition, and alleging that he has just cause to believe that he cannot have a fair trial on account of the cause alleged.

SEC. 4. If reasonable notice shall have been given to the adverse party or his attorney, the court shall hear the case, and award a change of venue to some court where the causes complained of do not exist, as convenient as may be [to] the opposite party.

SEC. 5. If the judge is interested, or related to, or shall have been of counsel in the cause for either party, the court or judge shall award such change of venue, without any application from either party, but neither party shall have more than one change of venue.

SEC. 6. If any judge award such change of venue, in vacation, he shall immediately transmit to the clerk of the court wherein the cause is pending, the petition and affidavit, with a written order for the change of venue.

SEC. 7. When any such order shall be made by the court or judge, the clerk shall immediately make out a full transcript of the record, and

HeinOnline -- 1866 53 1866

proceedings in the cause, including the petition, and affidavit and order of removal, and transmit the same, duly certified, together with all the original papers filed in the cause, and not forming a part of the record, to the clerk of the court to which the removal is ordered, and for failure to do so shall forfeit one hundred dollars to the party aggrieved, to be recovered by civil action, and shall also be liable on his bond for all such damages as either party may sustain.

SEC. 8. The clerk of the court to which such cause is certified shall file the same, and the cause shall be docketed, proceeded in and determined, as if it had originated therein.

SEC. 9. All costs, and expenses attending any such change of venue made on the application of either party, shall be taxed, and paid by the petitioner, and shall not be taxed in the costs of the suit.

SEC. 10. If such petitioner fail to pay such costs within fifteen days after the change of venue, such clerk may make out a fee bill against such petitioner and his securities (if any) and deliver the same to any sheriff, who shall levy and collect the same, with fifty per cent. thereon, for the use of the clerk in case of execution.

SEC. 11. If any clerk fail to transmit the transcript, and papers in any cause, the venue whereof has been changed, or if such papers be sent, and lost, such loss or failure shall not operate as a discontinuance of such cause, but at the next term of said court, they may be filed, or if lost, copies of the original papers may be furnished and filed, and the cause shall proceed as if no such failure or loss had happened.

SEC. 12. Changes of venue may be allowed from the probate courts or courts of county commisioners to the district courts for thes reasons and in like manner as herein provided: and for like cause, and in like manner shall changes of venue be awarded, from the court of one justice of the peace to that of any other in the same county.

SEC. 13. All courts to which changes of venue shall be taken under the provisions of this act, shall have jurisdiction to hear, and determine all civil cases, transferred to them respectively, and shall proceed to final judgment and execution, although such cause would not otherwise be cognizable therein.

CHANGE OF VENUE IN CRIMINAL CASES.

SEC, 14. When any indictment or criminal prosecution shall be pending in any district court of this territory, the same shall be removed by the order of such court, or the judge thereof, to the district court of some county in a different circuit, in either of the following cases:

First—When the judge of the court in which the cause is pending is near of kin to the defendant, by blood or marriage, or

Second—When the offence charged is alleged to have been committed against the person or property of such judge, or of some person near of kin to him, or

Third—When the judge is, in any wise, interested or prejudiced, or shall have been counsel in the cause.

SEC. 15. Any criminal cause pending in any district court, may be removed by the order of such court or the judge thereof, to the district

HeinOnline -- 1866 54 1866

court of any county in the same district, whenever it shall appear in the manner hereafter provided, that the minds of the inhabitants of the county in which the cause is pending are so prejudiced against the defendant that a fair trial cannot be had.

SEC. 16. Whenever it shall appear in the manner hereinafter provided that the inhabitants of the entire district are so prejudiced against the defendant that a fair trial cannot be had therein, the cause shall, by order of the court or judge in vacation be removed to another district in which such prejudice is not allowed to exist.

SEC. 17. The petition of such applicant for a change of venue shall set forth the facts, and the truth of the allegation shall be supported by the affidavit of the defendant, or some credible disinterested person; and reasonable previous notice of such application must be given to the prosecuting attorney.

SEC. 18. Whenever it shall be within the knowledge of a court or judge thereof that facts exist which would entitle a defendant to a change of venue in any criminal cause, on his application, such court or judge may make an order for such change of venue without any application by the defendant for that purpose.

SEC. 19. Every order for the removal of any cause under the foregoing provisions shall state whether the same is made on the application of the defendant or on facts within the knowledge of the court or judge, and shall specify the cause of removal, and designate the county or district to which the cause is removed, and such order, if made in term time shall be entered on the minutes, and if made by the judge in vacation, shall be in writing, and signed by such judge, and shall be filed and made part of the record in the cause.

SEC. 20. When such order shall be made, the defendant, if not in confinement or custody, shall enter into a recognizance, with sufficient sureties, for his appearance to answer the charge in the court to which the cause is to be removed, at the next term thereof and not to depart such court without leave, nor shall any order for the removal of a cause be effectual in a case of a defendant not in confinement or custody unless such recognizance be given.

SEC. 21. If the defendant be in actual custody or confinement, the court or judge granting the order for change of venue, shall also make an order commanding the sheriff to remove the body of the defendant to the county into which the cause is removed, so that he be forthcoming at the next term of court in such county, and may order him to be committed to the jail of that or any other county, in which a safe or secure prison may be had.

SEC. 22. In all cases when a change of venue is ordered it shall be the duty of the clerk to make out and forthwith transmit to the clerk to make out and forthwith transmit to the clerk of the court to which such change is granted, a complete copy of the record in said cause, and shall, at the same time, send all recognizances of defendant or witnesses, with the original indictment, and shall also preserve in his office, a copy of the indictment against such defendant, and shall do and perform all the duties enjoined upon them by sections seven and eight of this act.

HeinOnline -- 1866 55 1866

SEC. 23. In no case shall a second change of venue or removal of any criminal cause be allowed by any judge or court of this Territory.

SEC. 54. All acts and parts of acts inconsistent herewith, be, and the same are hereby repealed.

SEC. 25. This act shall take effect from and after its passage.

Approved, December 15, 1866.

COUNCIL AND REPRESENTATIVE DISTRICTS.

CHAPTER IX.—*An Act defining the Council and Representative Districts of the Territory of Montana and apportioning the Members of the Legislative Assembly thereof.*

Be it Enacted by the Legislative Assembly of the Territory of Montana, as follows:

SEC. 1. The Legislative Assembly of the Territory of Montana shall consist of thirteen members of the Council and twenty-six members of the House of Representatives, and shall convene once in each year at the seat of government of this Territory, and the regular annual session of said Legislative Assembly shall hereafter commence on the first Monday of December of each year at noon on said day.

SEC. 2. At the general election to be held on the first Monday in September or at such other time as may be prescribed by law for the holding of such general election, in the year of our Lord, eighteen hundred and sixty eight, and regularly thereafter, every second year, there shall be elected in each of the Council districts hereinafter mentioned the number of members of the Council of this territory, therein designated, who shall hold their offices for the term of two [years,] and this territory is hereby divided into six Council districts, as follows:

First district, Madison county—Three members of the Council.

Second district, Deer Lodge county—Three members of the Council.

Third district, Edgerton county—Three members of the Council.

Fourth district, Meagher and Chouteau and Vivion counties—Two members of the Council.

Fifth district, Beaver Head and Missoula counties—one member of the Council.

Sixth district, Gallatin, Jefferson and Big Horn counties—One member of the Council.

SEC. 3. At the general election to be held on the first Monday in September, or at such other time as may be prescribed by law for the time of holding such general election in the year of our Lord, one thousand eight hundred and sixty seven, and annually thereafter, there shall be elected in each of the Representative districts, hereinafter mentioned the number of members of the House or Representatives therein designated, and the Territory of Montana is hereby divided into nine Representative Districts, as follows:

First Representative district, Madison county—Five members of the House of Representatives.

HeinOnline -- 1866 56 1866

Second Representative district, Deer Lodge county—Five members of the House of Representatives.

Third Representative district, Edgerton county—Five members of the House of Representatives.

Fourth Representative district, Meagher and Vivion counties—Three members of the House of Representatives.

Fifth Representative district, Beaver Head county—Two members of the House of Representatives.

Sixth Representative District—Missoula county, two members of the House of Representatives.

Seventh Representative District—Gallatin and Big Horn counties, two members of the House of Representatives.

Eighth Representative District—Jefferson county, one member of the House of Representatives.

Ninth Representative District—Chouteau county, one member of the House of Representatives.

SEC. 4. The person or persons having the highest number of votes in each district for members of the Council and House of Representatives shall be elected and entitled to the certificate of election on application at the office of the Governor of the Territory.

SEC. 5. That the Fourth Legislative Assembly of the Territory of Montana shall consist of the thirteen members of the council elected at the general election held on the first Monday of September, A. D., 1866, to hold said offices for two years, and such other members as may be elected to fill any vacancies that may occur, and twenty-six members of of the House of Representatives to be elected as provided for in this act; said Legislative Assembly to convene at the seat of government on the first Monday of December, A. D. 1867, at noon of said day.

SEC. 6. All acts and parts of acts conflicting with the provisions of this act are hereby repealed.

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved, December 13, 1866.

CONTRACTS.

CHAPTER X.—*An Act in Relation to Contracts, Bills of Exchange, Promissory Notes and Accounts.*

Be it Enacted by the Legislative Assembly of the Territory of Montana, as follows:

SECTION. 1. All contracts which by the common law, are joint only, shall be construed to be joint, and several.

SEC. 2. In case of the death of one or more of the joint obligors or promisers, the joint debt or contract shall, and may survive against the heirs, executors and administrators of the deceased obligors or promisers, as well as against the survivors.

HeinOnline -- 1866 57 1866

SEC. 3 When all the obligors or promisers shall die, the debt or contract shall survive against the heirs, executors and administrators of all the deceased joint obligors and promisers.

SEC. 4. In all cases of joint obligations and joint assumptions of copartners or others, suits may be brought and prosecuted against any one or more of those who are so liable.

SEC. 5. Every instrument of writing expressed on the face thereof, to be sealed, and to which the person executing the same shall affix a scrawl by way of a seal, shall be deemed and adjudged to be sealed.

SEC. 6. No covenant or contract to repair shall impose upon a tenant the obligation to re-build or repair any building destroyed or damaged by fire, without the procurement, connivance or neglect of such tenant, his agents or servants, during the continuance of the term for which such building was leased or let, unless such tenant shall specially covenant or contract to rebuild or repair in case of the destruction or damage of such building by fire, and no action, suit or proceedings shall be maintained or prosecuted against any tenant or other persons in whose house or apartment any fire shall accidentally begin or take place, nor shall any recompense be made by such person for any damages occasioned thereby, any law, custom or usage to the contrary notwithstanding.

SEC. 7. In all cases when bonds, bills or promissory notes have been executed, payable in gold dust or gold or silver bullion or other personal property, the current value of such gold dust, gold or silver bullion or other property in United States Treasury Notes, at the time the same should have been paid or delivered shall be the true measure of damages.

SEC. 8. All notes in writing, made and signed by any person or persons which he or they shall promise to pay to any other person or persons or to his or their order, or the order of any other person, or unto the the bearer, any sum of money therein mentioned, or any amount of gold dust, or bullion of either gold or silver, shall be due and payable as therein expressed, and shall be negotiable in like manner as inland bills of exchange according to the customs of merchants.

SEC. 9. Every such note signed by the agent of any person, body politic or corporation, under a general or special authority, shall bind such persons, bodies politic or corporate, and shall have the same effect, and be negotiable as above provided.

SEC. 10. No person within this Territory shall be charged as an acceptor of a bill of exchange, unless his acceptance shall be in writing signed by himself or his lawful agent.

SEC. 11. If such acceptance be written on a paper other than the bill, it shall not bind the acceptor except in favor of a person, who, upon the faith thereof, shall have received the bill for a valuable consideration.

SEC. 12. An unconditional promise in writing to accept a bill before it is drawn, shall be deemed an actual acceptance in favor of every person to whom such written promise shall have been shown, and who, upon the faith thereof, shall have received the bill for a valuable consideration.

SEC. 13. Every holder of a bill, presenting the same for acceptance, may require that the acceptance be written on the bill, and a refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for non-payment.

HeinOnline -- 1866 58 1866

Sec. 14. The preceding section shall not be construed to impair the right of any person to whom a promise to accept a bill may have been made, and who, on the faith of such promise shall have drawn or negotiated the bill, to recover damages of the party making such promise, on his refusal to accept such bill.

Sec. 15. Every person upon whom a bill of exchange may be drawn, and to whom the same shall be delivered for acceptance, who shall destroy such bill, or refuse within twenty-four hours after such delivery, to return the bill accepted or non-accepted to the holder, shall be deemed to have accepted the same.

Sec. 16. When any bill of exchange, expressed to be for value received, drawn or negotiated in this Territory, shall be duly presented for acceptance or payment and protested for non-payment or non-acceptance, there shall be allowed and paid to the holder by the acceptor or by the drawer and endorser, having due notice of the dishonor of the bill, damages in the following cases:

First—If the bill shall have been drawn on any person at any place within this Territory, at the rate of fifteen per centum on the principal sum specified in the bill, and if for gold dust or bullion, fifteen per centum on the actual value of the same, in United States Treasury notes.

Second—If the bill shall have been drawn on any person at any place out of this Territory but within the United States or territories thereof, at the rate of twenty per cent on the principal sum specified in the bill, or if for gold dust or bullion the same per centum on the actual value thereof in United States Treasury Notes.

Third—If the bill shall have been drawn on any person at any part or place without the United States and their Territories, at the rate of twenty-five per centum. on the principal sum specified in the bill or if for gold dust or bullion, the same per cent. on the actual value of the same in United States Treasury Notes.

This section shall not be construed to require notice of non-acceptance or non-payment, in any case where such notice is not required to be given at common law.

Sec. 17. The damages allowed by this act shall be recoverable only by the holder of a bill, who shall have purchased the same, or acquired some interest therein for a valuable consideration.

Sec. 18. In case of non-acceptance or non-payment of a bill drawn at any place within this Territory on any person at a place within the same, no damages shall be recovered if payment of the principal sum, with the interest and charges of protest be paid within ten days after demand or notice of the dishonor of the bill.

Sec. 19. The damages allowed by this act shall be in lieu of interest, charge of protest, and all other charges incurred previous to, and at the time of giving notice of non-payment, but the holder of such bill shall be entitled to demand and recover lawful interest upon the aggregate amount of the principal sum or the value of the gold dust or bullion, (ascertained as aforesaid) specified in such bill, and of the damages thereon from the time at which time of protest for non-payment shall have been given, and payment of such principal shall have been demanded.

Sec. 20. The payees and endorsers of every bill or negotiable note,

HeinOnline -- 1866 59 1866

payable to them or order, and the holder of every such note, payable to bearer, may maintain actions for the sums of money therein mentioned, against the makers and endorsers of them, respectively, in like manner as in cases of inland bills of exchange, and not otherwise.

Sec. 27. Such bills and negotiable promissory notes made payable to the order of the maker thereof, or the order of a fictitious person, shall, if negotiated by the maker, have the same effect and be of the same validity as against the maker, and all persons having knowledge of the facts as if payable to bearer.

Sec. 22. Every bill of exchange, draft, or order, drawn either within this Territory or elsewhere, upon any person residing within this Territory payable on its face at sight, or on demand, shall be deemed and considered to be due and payable on the day it is presented or demanded, any usage or custom, here or elsewhere, to the contrary notwithstanding, and if not so paid, may be protested for non-payment.

Sec. 23. In all cases where notice of non-acceptance of a bill of exchange or non-payment of a bill of exchange, promissory notes or other negotiable instruments may be given by sending the same by mail, it shall be sufficient if such notice be directed to the city or town where the person sought to be charged by such notice resides at the time of drawing, making or endorsing such bill of exchange, promissory note or other negotiable instrument, unless such person at the time of affixing his signature to such bill, note or other negotiable instrument, shall, in addition thereto, specify thereon the post office to which he may require the notice to be addressed.

Sec. 24. When the day of payment of any bond, bill of exchange, or promissory note, shall, according to its terms, be a Sunday, Christmas Day, Thanksgiving Day, (territorial or national) New Year's Day, Fourth of July or the twenty-second day of February and eighth day of January, its pay shall be deemed due, and be demandable, on such day next after its day of payment, according to its terms, as shall not be one of the days above specified.

Sec. 25. A notarial protest is evidence of a demand and refusal to pay a bill of exchange or negotiable promissory note, at the time and in the manner stated in such protest.

Sec. 26. All non-negotiable notes in writing made and signed by any person or his agent, whereby he shall promise to pay any person, any sum of money or property therein mentioned, shall impart a consideration, and be due and payable as therein specified.

Sec. 27. All bonds and promissory notes for money or property shall be assignable in writing or by an endorsement on such bond or promissory note, and the assignee may maintain an action thereon, in his own name, against the obligor or maker for the recovery of money specified in such bond or note, or so much thereof as shall appear to have been due at the time of the assignment, in like manner as the obligee or payee might have done.

Sec. 28. The obligor or maker shall be allowed every just set off or other defense against the assignee, or the assignor, existing at the time of or before notice of the assignment, unless it shall be a negotiable note.

Sec. 29. An account for sums of money or for property due on con-

HeinOnline -- 1866 60 1866

tract may be assigned in writing, and the assignee shall have the same right of action in his own name, which the assignor would have had, subject to the same defences and set-offs, which the debtor would have had against the assignor, prior to the notice of such assignment.

Sec. 30. It shall not be in the power of the assignor, after assignment to release any part of the demand, nor shall any assignee ever obtain greater title to, or interest in, any bond, note or account, than the person had from whom he acquired it.

Sec. 31. The assignee of a bond, note or account, may maintain an action against the assignor upon failure to obtain payment from the obligor, maker or debtor, only in one of the following cases:

First—If he use due diligence in the institution and prosecution of a suit against the obligor, maker or debtor for the recovery of the money or property due, or damages in lieu thereof.

Second—If the obligor, maker or debtor is insolvent, or is not a resident of, or residing within this Territory, so that a suit would be unavailing, or could not be instituted.

Sec. 32. This act shall take effect and be in force from and after its passage.

Approved, December 3, 1866.

EXTRA COMPENSATION.

CHAPTER XI.—*An Act allowing extra compensation to certain officers of this Territory.*

Be it enacted by the Legislative Assembly of the Territory of Montana, as follows:

Section 1. That compensation over and above the per diem now allowed by the Congress of the United States to each member of the Legislative Assembly of this territory, be three (3) hundred and twenty dollars per annum, to be computed from the first day of the present Legislature.

Sec. 2 And be it further enacted, that there be allowed, and paid to the first, and assistant clerks of each House, over and above the per diem allowed by Congress, three hundred and twenty dollars each; to the sergeant-at-arms of each House, two hundred and fifty dollars; to each door keeper of each House, the sum of two hundred and fifty dollars; and to each enrolling and engrossing clerk of each House, two hundred and fifty dollars each; to the pages of each House, two hundred dollars each; *provided*, there shall not be more than two pages to each House; each fireman shall be allowed the sum of four hundred dollars.

Sec. 3. That it shall be the duty of the door keeper of each House of the Legislative Assembly to employ at each session of the Legislature a fireman, who shall be in attendance at all times during the sittings of their respective Houses, they shall discharge such duties as shall be directed by the door keeper, and it shall be the duty of the Legislature to

HeinOnline -- 1866 61 1866

appropriate such sums of money in the treasury, not otherwise appropriated, for said fireman as they may think proper. The present session of the Legislature shall have the power to allow to their present fireman of either House such sums as they may think fit and proper, which, when allowed, shall be paid as in this section above; *Provided*, that no allowance for the present or any subsequent Legislature shall exceed the sum of four hundred dollars to each fireman.

SEC. 4. The present or any subsequent Legislature shall have the power to employ any additional clerks that their business may require, and when any clerk has or at any subsequent session may perform extra labor or services, they shall have the power to allow such clerks such sums as may be just, in addition to their salary provided in this act.

SEC. 5. And be it further enacted, that the auditor, upon the certificate of the chief clerk of either House of the Legislative Assembly of this territory, attested by the President of the Council, or Speaker of the House, shall issue his warrant on the treasurer of the territory to the persons hereinbefore mentioned, for the amount each party is entitled to under this act, and it shall be the duty of the treasurer, to pay the same as provided by law.

SEC. 6. This act shall take effect, and be in force from and after its passage.

Approved, Dec. 15, 1866.

CIVIL CASES.

CHAPTER XII.—*An Act to amend an act entitled "an Act to regulate Proceedings in Civil Cases in Courts of Justice of the Territory of Montana," passed April* 12, 1866.

Be it enacted by the Legislative Assembly of the Territory of Montana as follows:

SEC. 1. The plaintiff, at the time of filing his complaint, and issuing of summons thereon, or at any time afterwards may have the property of the defendant attached as security for the satisfaction of any judgment that may be awarded, unless the defendant give security to pay such judgment in the following cases:

First—In an action upon a contract, express or implied, for the direct payment of money, or specific personal property, which contract was made or is payable in this Territory, and is not secured by a mortgage, lien or pledge upon real or personal property, or if so secured, that such security has been rendered nugatory by the act of the defendant.

Second, in an action upon a contract, express or implied, against a defendant not residing in this territory or foreign corporation.

Third, upon any express or implied contract for the payment of money or property made out of this territory, and barred by any statute of limitation of this territory.

SEC. 2. The clerk of the court shall issue the writ of attachment upon

HeinOnline -- 1866 62 1866

receiving an affidavit by, or on behalf of the plaintiff which shall be filed showing:

First, that the defendant is indebted to the plaintiff, specifying the amount of such indebtedness over and above all legal set offs, or counter claims, upon a contract express or implied, for the direct payment of money, or specified personal property, or,

Second, that the defendant is indebted to the plaintiff (specifying the amount of such indebtedness, as near as may be, over and above all legal set offs or counter claims) and that the defendant is a non resident of this territory or is a foreign corporation, or,

Third, that the contract was made out of this territory, and is not barred by any statute of limitation in force in this territory, that the sum for which the attachment was asked, is an actual *bona fide* existing debt, due and owing from the defendant to the plaintiff, and that the attachment is not sought, and the action is not prosecuted to hinder, delay, or defraud any creditor, or creditors of the defendant.

SEC. 3. Before issuing the writ, the clerk shall require a written undertaking on the part of the plaintiff in a sum, in all cases at least double the demand of the plaintiff, and not less in any case than two hundred dollars, with sufficient sureties; which sum may be increased at the pleasure of the court, in all cases to a sum sufficient to cover all costs in the case and damages the defendant may sustain: Conditional, that if the defendant recover judgment, or if the attachment should be dismissed, the plaintiff will pay all costs that may be awarded to the defendant, and the damages which the defendant may sustain by reason of the wrongful issuing of the attachment, not exceeding the amount specified in the undertaking.

SEC. 4. The writ shall be to the sheriff of any county in which the property of the defendant may be found, and require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant deposit the amount, or give him security by the undertaking of at least two sufficient sureties in an amount sufficient to satisfy such demand besides costs, in which case the sheriff is authorized to take such deposits or undertaking, several writs may be issued at the same time to the sheriffs of different counties.

SEC. 5. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interests and profits thereon, and all debts due such defendant and all other property in this Territory of such defendant, not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

SEC. 6. The sheriff to whom the writ is delivered, shall execute the same without delay, and if the undertaking mentioned in the preceding section of this act be not given, as follows:

First—Real property shall be attached by leaving a copy of the writ with the occupant thereof; or if there be no occupant, by posting a copy in a conspicuous place thereon and filing a copy, together with a description of the property attached, with the recorder of the

HeinOnline -- 1866 63 1866

county; except quartz claims or interest in any quartz lode, which shall be attached by posting in one of the most public places in the township or district wherein the same is located, a copy of the writ, together with a description of the quartz property attached, and by filing with the recorder of the county a copy of the same.

Second—Personal property capable of manual delivery shall be attached by taking it into custody.

Third—Stock or shares, or interest in stocks or shares of any corporation or company, shall be attached by leaving with the president or other head of the same, or the secretary, cashier or managing agent thereof, a copy of the writ and a notice stating the stock or interest of the defendant is attached in pursuance of such writ.

Fourht—Debts and credits, and other personal property, not capable of manual delivery, shall be attached by leavihg with the person owing such debts, or having in his possession or under his control such credits or other personal property, a copy of the writ, and a notice of the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control belonging to the defendant, are attached in pursuance to such writ, and from the time of such levy as provided in this section, the same shall be and remain a lien upon the property so attached.

SEC. 7. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession or under his control, any credits or other personal property belonging to the defendant, or his owing any debt to the defendant, the sheriff shall serve upon such person a copy of the writ, and a notice that such credits or other property or debts as the case may be, are attached in pursuance to such writ.

SEC. 8. All persons having in their possession or under their control, any credits or other personal property belonging to the defendant, or owning any debts to the defendant at the time of service upon them of the notice as provided in the last two sections, shall be (unless such property be delivered to, or such debts be paid to the sheriff) liable to the plaintiff, for the amount of such credits, property or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

SEC. 9. Any person owing debts to the defendant, or having in his possession, or under his control any credits or other personal property belonging to the defendant may be required to attend before the court or judge in vacation, or a referee appointed by the court or judge and be examined on oath respecting the same. The defendant may also, be required and compelled to attend for the purpose of giving information respecting his property, and be examined on oath. The court or judge may after such examination, order personal property capable of manual delivery to be delivered to the sheriff on such terms as may be just, having reference to any liens thereon.

SEC. 10. If it appear that a garnishee, at or before his garnishment, was possessed of any money or property of the defendant, or was indebted to him, the court or judge in vacation may order the delivery of such money or property, or the payment of the amount owing by the garnishee to the sheriff, or into court at such time as the court may direct; or may permit the garnishee to retain the same upon his executing a bond

HeinOnline -- 1866 64 1866

to the plaintiff, with security, approved by the court or judge in vacation, to the effect that the property shall be forthcoming, or the amount paid as the court may direct, upon a breach of the obligation of such bond, the plaintiff may proceed against the obligors therein by suit thereon in any court of competent jurisdiction.

SEC. 11. If such garnishee fail to deliver such money or property, or shall fail to pay the amount owing by him, to the sheriff at the time prescribed by said court or judge, or to pay the same into the court at such time as the court shall direct, or in case he fail to execute the bond prescribed in the preceding section, then it shall be the duty of said court or judge to render judgment against said garnishee for the amount of money, or the value of the property in his hands provided that said judgment shall in no case exceed the amount of plaintiff's demand, with interest and cost, which said judgment shall be referred as other judgments, and the money, when collected, shall be subject to the future order and direction of of said court or judge: *Provided*, That no such money shall be paid to the plaintiff by the direction of said court or judge until the plaintiff shall have obtained judgment against said defendant, and then only to the amount of said plaintiff's judgment with the interest and cost thereon, and the residue, if any, shall be paid over to the defendant or his legal representatives.

SEC. 12. The sheriff shall make a full inventory of the property attached and return the same with the writ. To enable him to make such return as to debts and credits attached, he shall request, at the time of service, the party owing the debts or having the credit, to give him a memorandum, stating the amount and description of each, and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amount, and description of such debt or credits, but such certificate shall not be conclusive evidence of the facts therein stated, nor shall it in any case prevent or excuse the party giving the same, from being examined under oath, touching the property, money, debts or credits in his possession or under his control.

SEC. 13. If any of the property attached be perishable, the court or judge in vacation shall make an order for the sale of the same, which said property shall be sold by the officer having the same in possession in the same manner in which such property is sold on execution, and the proceeds of such sale shall, with the other property in his hands be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution, upon another judgment recovered previous to the issuing of the attachment, debts and credits attached may be collected by him if the same can be done, without suit. The sheriff's receipt shall, in all cases, be a sufficient discharge of the amount paid.

SEC. 14. If judgment be recovered by the plaintiff, the sheriff or other officer shall satisfy the same out of the property attached by him which has not been delivered to the defendant, or a claimant as hereinbefore provided, or subject to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

HeinOnline -- 1866 65 1866

First—By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment.

Second—If any balance remain due and an execution shall have been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notice of the sale shall be given, and the sale conducted as in other cases of sales on execution

SEC. 15. If after selling all the property attached by him, remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance, as upon an execution in other cases; whenever the judgment shall have been paid, the sheriff or other officer, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

SEC. 16. If the execution be returned unsatisfied in whole or in part, the plaintiff may prosecute any undertaking given pursuant to any section of this act, or he may proceed as in other cases upon the return of an execution.

SEC. 17. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and monies collected by the sheriff, or deposits made by defendant, and all the property attached remaining in the sheriff's hands, shall be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom.

SEC. 18. Whenever the defendant shall have appeared in the action, he may apply upon reasonable notice to the plaintiff, to the court in which the action is pending, or the judge thereof, or to a probate judge of the county in which the action is pending, for an order to discharge the same, upon the execution of the undertaking mentioned in the next section, and if the application be granted all the proceeds of sales and moneys collected by the sheriff and all the property attached remaining in his hands shall be released from the attachment and delivered to the defendant, upon the justification of the sureties on the undertaking, if required by the plaintiff.

SEC. 19. Upon such application the defendant shall deliver to the court or judge, or the probate judge designated in the previous section, an undertaking executed by at least two sureties, residents of the district, to the effect that the sureties will, on demand, pay to the plaintiff the amount of any judgment that may be recovered in favor of the plaintiff in the action, not exceeding the sum specified in the undertaking, which shall be sufficient to satisfy the amount claimed by the plaintiff in his complaint, and the least the sureties may be required to justify on such application before the judge or court, and the property attached shall be released from the attachment, without their justification, if the same be required.

SEC. 20. The attachment may be dissolved on motion made in behalf

HeinOnline -- 1866 66 1866

of the defendant at term time or in vacation; if made in vacation, upon giving plaintiff five days previous notice in the following cases:

First—When the bond or affidavit on which the same was founded shall be adjudged by the court, or judge in vacation, or by the probate judge as aforesaid, to have been insufficient.

SEC. 21. In all cases when property or effects have been attached, the defendant or any creditor of the defendant interested, may file a plea, in the naturo of a plea in abatement, under oath, putting in issue the truth of the facts alleged in the affidavit on which the attachment was sued out.

SEC. 22. Upon such issue, the plaintiff shall be held to prove that the facts alleged by him in said affidavit, as the grounds of the attachment, at the time of the issuing of the writ of attachment.

SEC. 23. If the issue be found against the plaintiff, the attachment shall be dismissed at the costs of the plaintiff, and his sureties shall thereafter be liable upon the bond for all damages sustained by the defendant in consequence of the issuing of the attachment.

SEC. 24. From any order dissolving or refusing to dissolve any attachment, or from any other special order or proceedings in the cause materially affecting the rights of either party, appeals shall be allowed in the same manner and with like effect as is now provided by law for appeals or final judgments.

SEC. 25. The sheriff or other officer shall return the writ of attachment with a certificate of his proceedings endorsed thereon or attached thereto.

The provisions of this act shall not apply to any attachments already commenced, but so far as such writs of attachments may be concerned the existing laws of this Territory shall be deemed in full force and effect.

SEC. 26. This act shall take effect and be in force from and after its passage.

Approved, December 3, 1866.

SUNDAY LAW.

CHAPTER XIII.—*An Act for the better Observance of the Lord's Day.*

Be it Enacted by the Legislative Assembly of the Territory of Montana, as follows:

SECTION 1. Hereafter it shall be unlawful for any person or persons to keep open any play house, theatre, dance house, hurdy gurdy house, prize ring or race ground, on the first day of the week, commonly called the Lord's Day.

SEC. 2. Hereafter it shall be unlawful for any person or persons to keep open any house or other habitation wherein any game of chance is played, or open any banking game at cards, on the first day of the week, commonly called the Lord's day.

HeinOnline -- 1866 67 1866

SEC. 3. If any person or persons, shall violate the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, before any court of competent jurisdiction, shall be fined in a sum not less than five dollars, nor more than one hundred dollars, or imprisoned in the county jail, not less than one, nor more than thirty days for such offence, or both such fines and imprisonment, and in addition to such fine as aforesaid, shall be adjudged to pay all costs of the prosecution, and may be committed to jail until such fine and costs are paid.

SEC. 4. Justices shall have the power to try and determine all cases arising under the provisions of this act.

SEC. 5. All fines collected under the provisions of this act, shall, within thirty days after collection, be paid to the treasurer of the county in which the conviction is had, for the use of the common schools thereof.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved, December 13, 1866.

CONCERNING NOTARIES PUBLIC.

CHAPTER XIV.—*An Act Supplementary to an Act in Relation to Notaries Public.*

Be it Enacted by the Legislative Assembly of the Territory of Montana, as follows:

SEC. 1. That all Notaries Public who may hereafter be appointed by the Governor as prescribed by law, shall, in addition to the requirements now made by statute, have their commissions recorded by the clerk of the district court in the county where such notary may reside, and shall file with such clerk a bond of five hundred dollars to the people of the United States of the Territory of Montana for the faithful performance of the duties of said office.

SEC. 2. All Notaries Public who now hold commissions as such, shall, on or before the first day of March, A. D. 1867, have their commissions recorded and file a bond as prescribed in the preceding section. Non-compliance with the requirements herein specified shall work a forfeiture of any such commissions.

SEC. 3. The bond above specified shall be executed by the principal with two or more sureties, to be approved by said clerk; each of said sureties to swear that he is a resident of the Territory of Montana, and is worth the amount specified in said bond, over and above all debts and liabilities and property exempt from execution

SEC. 4. Any person or persons who shall have suffered damage by any mis-feasance or mal-feasance of office by any notary public, shall recover such damages as he or they may have sustained, by a civil action upon such officer's bond against the parties to such bond, in any court of competent jurisdiction.

SEC. 5. This act to take effect and be in force from and after its passage.

Approved, November 26, 1866.

HeinOnline -- 1866 68 1866

PAY OF JURORS.

CHAPTER XV.—*An Act Providing for the Payment of Jurors in Montana Territory*

Be it enacted by the Legislative Assembly of the Territory of Montana, as follows:

SECTION 1. No security for costs, nor deposits of money shall be required by any justice of the peace, or other officer, witness or juror, except as provided in this act, in the following sections, nor shall they refuse to act.

SEC. 2. No action of attachment, replevin, nor writ of injunction shall hereafter be issued, until a bond shall have been executed as now required by law, in double the amount of the value of the property, debt or damage claimed in cases of attachment and replevin, and in such amounts as the courts may severally demand in cases of injunction.

SEC. 3. No witness shall be compelled to attend court out of the county in which he resides, until the party requiring his attendance shall have tendered to such witness the traveling expenses allowed by law, and the fee for one day's attendance at court, except in criminal cases.

SEC. 4. It shall be the duty of the courts to tax the costs, including the jury fees, against the unsuccessful party or parties at law.

SEC. 5. The only cost that shall be hereafter taxed against the counties, shall be the costs for the pay of jurors required to attend court by law, and in criminal cases wherein the county is plaintiff at law. But in all cases when said jurors are required to set upon cases of civil action, the fees of jurors during the time thus consumed, shall be paid by the unsuccessful party or parties, in said civil action.

SEC. 6. If any party or parties, to an action before a justice of the peace shall demand a jury, the justice of the peace shall require said party or parties to deposit money sufficient to pay the cost and fees accruing from the summoning and setting of said jury, or shall give bond, with approved security, in a sufficient amount to the payment of said costs and fees; but if both plaintiff and defendant in such a case shall agree to submit their cause to a jury, then the costs and fees shall be taxed against the unsuccessful party or parties in said cause, otherwise the costs and fees shall be taxed against the person or persons demanding the jury.

SEC. 7. If no jury is demanded, the justice shall proceed to a hearing and determination of the cause without a jury; such determination being at all times subject to appeal.

SEC. 8. This act to take effect and be in force from and after its passage.

Approved, December 13, 1866.

HeinOnline -- 1866 69 1866

EXECUTORS AND ADMINISTRATORS.

CHAPTER XVI.—*An Act to amend an act entitled "An act respecting Executors and Administrators."*

Be it enacted by the Legislative Assembly of the Territory of Montana as follows:

SEC. 1. In all cases when administration of an estate of any deceased person shall be pending in any county in this Territory, and the administrator or executor thereof shall be a non resident of the county wherein the same is pending and shall have an attorney residing therein then any person desiring to establish or prove up a demand against any such estate shall deliver to, or cause to be delivered, a written notice, containing a copy of the instrument of writing or amount on which such demand is founded, and stating therein that he will present the same for allowance at the next or any subsequent term of the Probate court of the county where administration on such estate was granted.

SEC. 2. Such notice shall be served upon such attorney ten days before the commencement of any such term of the probate court, which shall be served in the same manner and have the same force and effect as if the same had been duly served upon the executor or administrator of such estate.

SEC. 3 In all cases it shall be lawful for any such attorney to appear in said court, without the service of the notice, and waive all further notice as to any such demands upon the records of said court, which said appearance and waiver shall be as binding and effectual against the administrator and executor of any such estate as if legal notice had have bsen duly served.

SEC. 4 This act to take effect from and after its passage.

Approved, Dec. 3, 1866.

PROBATE COURT OF DEER LODGE COUNTY.

CHAPTER XVII.—*An Act to repeal an act, entitled "An act regulating the Terms of the Probate Court of the County of Deer Lodge, and fixing the places for holding the same.*

Be it Enacted by the Legislative Assembly of the Territory of Montana, as follows:

SEC. 1. That the act entitled an act regulating the terms of the probate court of the county of Deer Lodge and fixtng the places for holding the same, approved March the twenty-ninth, A. D. eighteen hundred and sixty-six, be, and the same is hereby repealed.

SEC. 2. That this act take effect, and be in force from and after its passage.

Approved, Dec. 5, 1866.

HeinOnline -- 1866 70 1866

CREATING CERTAIN OFFICES.

CHAPTER XVIII.—*An Act to amend an act entitled "An act creating certain Offices in the Territory of Montana, providing for the manner of their elections, declaring to whom resignations shall be made, when the office shall be deemed vacant and the manner of filling vacancies."*

Be it enacted by the Legislative Assembly of the Territory of Montana, as follows:

SEC. 1. That section eleven of the act creating certain offices in the Territory of Montana, providing for the manner of their election, declaring to whom resignations shall be made, when the office shall be deemed vacant and the manner of filling vacancies, approved April 9, 1866, be so amended as to read: "When a vacancy shall occur at any time in the office of Territorial Treasurer, Auditor, Superintendent of Public Instruction, District Attorney in any judicial district, or county commissioners of any county of this Territory, the Governor shall appoint some suitable person to perform the duties of such offices until the next general election."

SEC. 2. That section twelve of same act mentioned in the first section of this act be so amended as to read: "When a vacancy shall occur in any county or precinct office, except those of county commissioners, it shall be the duty of the county commissioners of the county where such vacancy shall occur, to appoint some suitable and competent person to perform the duties thereof until the next general election.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved, November 12, 1866.

ELECTIONS.

CHAPTER XIX—*An act, to repeal section thirty-two of an act, entitled an Act relative to Elections.*

Be it enacted by the Legislative Assembly of the Territory of Montana as follows:

SEC. 1. That section thirty-two, passed by the first Assembly of the Territory of Montana, of an act, entitled an act relative to elections, be, and the same is hereby repealed.

SEC. 2. This act to be in force, and take effect, from and after its passage.

Approved, Dec. 11, 1866.

HeinOnline -- 1866 71 1866

COUNTY SEAT OF MISSOULA COUNTY.

CHAPTER XX.—*An Act to change the County Seat of Missoula County, and to Legalize the Acts of the county commissioners of said county.*

Be it Enacted by the Legislative Assembly of the Territory of Montana, as follows:

SECTION 1. That the county seat of Missoula county, be and same is hereby located at the town of Missoula Mills, in said county, and the legal voters of said Missoula county, at the next general election, shall inscribe upon their ballots the place where said county seat shall be located, and the highest number of votes designating the place, shall be the county seat of said county thereafter.

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its passage.

Approved, December 14, 1866.

A CENSUS.

CHAPTER XXI.—*An act to provide for a census to be taken in the year one thousand eight hundred and sixty-seven.*

Be it enacted by the Legislative Assembly of the Territory of Montana, as follows:

SEC. 1. That it shall be the duty of the assessors of the several counties of this Territory at the time of collecting the poll tax for the year A. D. 1867, to take a census of the inhabitants in their several districts.

SEC. 2. It shall be the duty of the territorial auditor to furnish the several counties of this territory with a sufficient number of blanks for the use of the assessors of said counties.

SEC. 3. Said blanks shall be printed with separate columns, as follows:

Name.
Male.
Female.
Age.
Color.
Place of nativity.
Married.
Unmarried.
Occupation.

And it shall be the duty of the assessors in each county of the territory to make out a correct list or lists upon the said blanks in the above order and furnish a correct abstract of the same, together with said list or lists to the county clerk of the county in which such enumeration was had, who shall certify to the same, and such county assessor shall, on or be-

HeinOnline -- 1866 72 1866

fore the first day of October, A D. 1867, transmit such abstract to the territorial auditor, who shall, on or before the first day of November, A. D. 1867, file the said abstract in the office of the secretary of the territory.

SEC. 4. That the assessor taking such census shall be paid five cents per head, for each person named in his list, out of any funds in the treasury of his county, not otherwise appropriated.

Sec. 5. The auditor shall draw his warrant upon the territorial treasurer for the payment of all stationery, printing and blanks necessaay to carry out the provisions of this act.

Sec. 6. This act to take effect, and be in force, from and after its passage.

Approved, December 15, 1866.

JEFFERSON COUNTY.

CHAPTER XXII.—*An Act authorizing the People of Jefferson county to hold an Election for the purpose of changing and permanently locating the county seat of Jefferson county.*

Be it Enacted by the Legislative Assembly of the Territory of Montana, as follows:

SECTION 1. That the board of county commissioners of Jefferson county shall have the authority and it shall be their duty, at any regular meeting of said board of commissioners, upon a presentation of a petition signed by fifty residents of said county, to order an election for the purpose of changing and permanently locating the county seat of Jefferson county.

Sec. 2. That it shall be the duty of the said board of county commissioners, to order such places to be voted for for county seat as may be named in the petition, together with the present county seat of Jefferson county, and the place receiving the greatest number of votes shall be the county seat of said county.

Sec. 3. That such notice shall be given and said election shall be conducted and the vote canvassed in like [manner] as is prescribed by law for other county elections.

Sec. 4. That it shall be the duty of all county officers of Jefferson county to remove to and hold their offices at such place as may be chosen as county seat of said county, by a vote of the people thereof within twenty days after the vote shall have been canvassed and the results declared.

SEC. 5. That this act take effect, and be in force from and after its passage.

Approved, December 14, 1866.

HeinOnline -- 1866 73 1866

PENAL BONDS.

CHAPTER XXIII.—*An Act concerning Penal Bonds.*

Be it enacted by the Legislative Assembly of the Territory of Montana, as follows:

Sec. 1. In all actions brought upon bonds in which there is a condition or defeasance, by which the same is to become void on the payment of a less sum, the plaintiff shall set out the condition in his petition and may assign as many breaches as he may think proper.

Sec. 2. The defendant in such action may plead payment of the principal sum, and interest due by the condition of such bond, before the commencement of such action, although the payment was not strictly according to such condition.

Sec. 3. Whenever any action shall be pending on such bond, the defendant may, at any time before judgment rendered in such action, pay to the plaintiff or bring into court for the plaintiff's use, the principal sum and interest due on such bond, together with costs in such action, and thereupon such action shall be discontinued.

Sec. 4. If judgment be recorded on any such bond, such judgment shall be rendered for the sum really due according to such condition, with interest and costs, and execution shall issue thereon accordingly.

Sec. 5. When any action shall be prosecuted in any court upon any bond for the breach of any condition other than the payment of money, or shall be prosecuted for any penal sum for the non-performance of any covenant or written agreement, the plaintiff in his petition shall assign the specific breaches for which the action is brought.

Sec. 6. Upon the trial of such action, if the jury find that any assignment of such breach is true, they shall assess the damages occasioned by the breach, in addition to their finding, or any other question of fact submitted to them.

Sec. 7. If in such action the plaintiff shall obtain judgment upon demurrer, by confession or default, the court shall make an order therein that the truth of the breach assigned be inquired into, and the damages sustained thereby be assessed at the same or the next term, and the court shall proceed therein in the same manner as other cases of inquiry of damages.

Sec. 8. In every such action, if the plaintiff recover, the verdict assessing the damages shall be entered on the record, and judgment shall be rendered for the penalty of the bond, or for the penal sum forfeited, as in other actions, together with costs of suit, and with a further judgment that the plaintiff have execution for the damages so assessed which damages shall be specified in the judgment.

Sec. 9. The execution on such judgment shall be in the usual form, reciting the recovery and directing the sheriff to levy the amount of damages so assessed, (which amount shall be stated) with interest thereon from the time of such assessment and the costs of such suit.

HeinOnline -- 1866 74 1866

Sec. 10. The judgment rendered for the penalty of the bond sued on, or for the penal sum forfeited, shall remain as a security for any damages that may be thereafter sustained by the further breach of any condition of such bond, or the non-performance of any other covenant or written agreement by the defendant, the performance of which was secured by such penal sum.

Sec 11. Whenever such further breaches shall occur, the plaintiff or his personal representative may have a scire facias upon such judgment, suggesting such breaches against the defendant and all parties bound thereby, and commanding that they be summoned to show cause why execution should not be had upon such judgment for the amount of the damages sustained by such further breaches.

Sec. 12. The like proceedings to ascertain such damages shall be had upon such writs herein before provided in the first instance; and if the plaintiff recover, judgment shall be rendered that the plaintiff have execution to collect the amount of damages assessed and costs.

Sec. 13. The execution issued on such judgment shall have the like effect, and be proceeded on in all things as in the first instance; but the judgment shall remain as a security for further breaches and so on, as often as occasion may require.

Sec. 14. Whenever, in any action brought according to the provisions of this act, the jury shall find that any assignment of breach is not true, the same shall be a bar to any other or further suit by scire facias or otherwise for the recovery of any damages alleged to have been sustained by occasion of the same breaches so assigned.

Sec. 15. In all cases where, by the law of this Territory, any person is authorized to prosecute a suit to his own use, on any official bond, he shall sue in the name of the Territory or other obligee named in the bond, stating in the process, pleadings, proceedings and record in such action, that the same is brought in the relation and to the use of the person so sueing.

Sec. 16. In such action the same pleadings and proceedings shall be had as before provided in cases of suits upon bonds, with conditions other than for the payment of money except as hereinafter otherwise provided.

Sec. 17. A judgment for the defendant in such action shall be a bar to any other suit that may be brought on the same official bond, by the same relator, for any delinquency or default which was assigned as a breach of the condition of such bond in the action on which such judgment was rendered.

Sec. 18. Any other party aggrieved may, in like manner, prosecute an action on such official bond, and the pendency of any suit at the relation of any other person on such bond, or a judgment recovered by or against any other person on such bond, shall not abate, or in any manner affect such suit, or the proceedings thereon, except as herein provided.

Sec 19. Any person who may have recovered any judgment upon such official bond may, in like manner, again prosecute an action on such bond whenever he is aggrieved by any default or delinquency other than

HeinOnline -- 1866 75 1866

such as shall have been the subject of the former suit, and shall proceed therein as hereinbefore provided.

Sec. 20. No scire facias shall be brought upon any judgment rendered upon such official bond by the same or any other relator, for any breach of the condition of the bond.

Sec. 21. Every suit brought upon such official bond to the use of the party aggrieved, and every judgment thereon, shall be deemed the private suit and judgment of the relator, in the same manner in every respect as if he were the nominal plaintiff; and such relator shall be liable to costs as other plaintiffs.

Sec. 22. No such suit shall be barred, nor shall the amount which the plaintiff may be entitled to recover be affected by any answer made by any surety in such bond of a judgment recovered thereon, unless it be accompanied by an allegation that the sureties or some of them, have been obliged to pay the damages on such judgment, or some part thereof, for want of sufficient property of the principal whereon to levy the same, or that they will be obliged to pay the same, or part thereof, for the same reason, nor unless such answer be verified by affidavit.

Sec. 23. If it appear that the amount of damages so recovered, which a surety has been or will be obliged to pay, as specified in the last section, is equal to the amount for which such defendant shall be liable by virtue of the bond, he shall be acquitted and discharged from all further liability, and judgment shall be rendered in his favor.

Sec. 24. If it shall appear that the damages so recovered, and which such surety has been or will be obliged to pay, is not equal to the amount of his liability, the amount thereof shall be allowed him in estimating the extent of his liability in any such action.

Sec. 25. Whenever a judgment shall be obtained on an official bond against principal and securities, a direction shall be endorsed on the execution by the plaintiff or his attorney, to levy the amount in the first place on the property of the principal, and if sufficient property of such principal cannot be found to satisfy such execution, then to levy the deficiency on the property of the sureties

Sec. 26. If several judgments be obtained at the same term upon any official bond for damages, amounting in the whole to more than the sum for which the sureties therein are liable the court shall order the money levied on such judgments from the property of the sureties to be distributed to the relators, respectively, on such judgments, in proportion to the amount of their respective recoveries.

Sec. 27. If executions be issued upon such several judgments obtained at the same term, and sufficient money shall not be made to satisfy all the executions, the court shall distribute the money collected thereon to the relators, in proportion to their respective recoveries.

Sec. 28. The provisions of this act, in relation to suits, on official bonds, shall apply as well to suits on bonds of executors, administrators, guardians, curators and others, required by law to give bond with condition for the performance of any duty or trust, as to suits on bonds of officers; and the persons aggrieved may prosecute suits in the same manner and with the like effect, and may be subject in all respects to the

HeinOnline -- 1866 76 1866

provisions therein contained in respect to suits on official bonds, and the courts shall possess the same power in relation to such suits

Sec. 29. In all suits on attachment bonds, or to recover any penalty therein against the plaintiff in such attachment suits, it shall be lawful for the party sued to plead and set off in such suits the original demand upon which said attachment was issued, or any other demand which such defendant may have against such plaintiff.

Sec. 30. This act to take effect and be in force from and after its passage,

Approved, Dec. 13, 1866.

—o—

GALLATIN COUNTY.

CHAPTER XXIV.—*An Act to authorize the People of Gallatin county to establish the county seat of Gallatin county.*

Be it Enacted by the Legislative Assembly of the Territory of Montana as follows:

SECTION 1. That the people of Gallatin county shall have the right to change their present county seat at the next general election, by a vote of the qualified electors of said county of Gallatin.

Sec. 2. Elections for county seat shall be conducted in the same manner as other elections are and the place receiving the highest number of legal votes shall be the county seat.

Sec. 3. This act to take effect and be in force from and after its passage and approval.

Approved, December 14, 1866.

VIVION COUNTY.

CHAPTER XXV.—*An Act to change the name of Muscleshell county and county seat.*

Be it Enacted by the Legislative Assembly of the Territory of Montana, as follows:

SECTION 1. That the name of Muscleshell county, Montana Territory, be changed, and shall be called and known by the name of Vivion county.

Sec. 2. That the county seat of Vivion county be called Smithton.

Sec. 3. That all acts and parts of acts in conflict with the provisions of this act be and the same are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its passage, and approval by the Governor.

Approved, November 21, 1866.

HeinOnline -- 1866 77 1866

WARRANTS.

CHAPTER XXVI.—*An Act prohibiting the Territorial Auditor from issuing warrants in favor of any person without an express provision of law, and for other purposes.*

Be it enacted by the Legislative Assembly of the Territory of Montana as follows:

SECTION 1. The Territorial Auditor of this Teritory is hereby forbidden to issue any warrant in favor of any person, drawing upon the Territorial Treasurer, unless he is authorized by law expressly, in which the name of the party shall be specified the, nature of the service performed, and the amount specified in such law for the performance of such service.

Sec. 2. That in case the Territorial Auditor shall issue any warrant in favor of any person, contrary to the provisions of the foregoing section of this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction in this Territory, shall be fined in a sum not less than one thousand, nor more than five thousand dollars, to be collected as in other cases provided by law, and in addition shall forfeit all right to hold and enjoy said office, which shall become vacant from and after such conviction, and it shall be the duty of the Governor of this Territory to proceed forthwith, to fill, by the appointment of a proper person, such vacancy, until the next general election thereafter.

SEC. 3. This act to take effect and be in force from and after its passage.

Approved, December 15, 1866.

CAPITAL OF MONTANA.

CHAPTER XXVII.—*An Act to amend an act entitled an act for the Location of the Seat of Government in and for the Territory of Montana.*

Be it Enacted by the Legislative Assembly of the Territory of Montana, as follows:

SECTION 1. That the seat of Government in and for the Territory of Montana be and the same is hereby located at the city of Helena, Edgerton county, Montana Territory.

Sec. 2. That the question of permanently locating the seat of government in and for Montana Territory, shall be submitted to a vote of the qualified voters of the Territory at the annual election to be holden on the first Monday of September, A. D., 1867.

Sec. 3. If a majority of all the votes cast shall designate the city of Helena as the seat of government, it shall be, by proclamation of the Governor, so declared; or if a majority so voting shall designate the city, Virginia, in Madison county, Montana Territory, the Governor, by

HeinOnline -- 1866 78 1866

proclamation, shall so declare it, and the place receiving the highest number of votes shall be the seat of government.

Sec. 4. The ballot shall be headed "For seat of government for Montana Territory," and the elector shall write under said caption, the name of the place he desires to vote for.

Sec. 5. That all acts or parts of acts in any way conflicting with the provisions of this act be, and the same are hereby repealed.

SEC. 2. This act to take effect, and be in force, from and after its passage and approval by the Governor.

Approved, Dec. 14, 1866.

OFFICERS REPORTS.

CHAPTER XXVIII—*An act in relation to Officers failing to make Reports as required by law.*

Be it enacted by the Legislative Assembly of the Territory of Montana, as follows :

Sec. 1. That any county Treasurer, school superintendent, or other county officer, whose duty it is to report concerning business of their respective offices of collections made, and to make settlements with the territorial auditor, treasurer or superintendent of public instruction, either monthly, quarterly, semi-annually or annually, who shall fail to make such report, or make such settlement upon the day as required by law, shall forfeit his right to such office held by him, and shall forthwith be prosecuted by the district attorney of the judicial district to which his said county may be annexed, upon his said bond, in a civil action against such officer and his sureties, for failure in making such settlement.

Sec. 2. It shall be the duty of the Governor to declare vacant the office of any officer who shall forfeit his office according to the provisions of the first section of this act, and to forthwith appoint some competent person to fill such office, who shall hold the said office unless sooner removed until a successor shall be duly elected and qualified according to law. Persons appointed to fill such vacanies shall be at the time of their appointment residents of the county to which the office may belong.

Sec. 3. This act to take effect, and be in force, from and after its passage.

Approved, December 10, 1866.

POOR LAW.

CHAPTER XXIX.—*An act entitled an act to provide for the Support of the Poor.*

Be it Enacted by the Legislative Assembly of the Territory of Montana, as follows :

SECTION 1. Aged, infirm, lame, blind or sick persons who are not able to support themselves, shall be relieved, maintained and supported

HeinOnline -- 1866 79 1866

by the county of which they are inhabitants; *Provided*, Such person or persons have no relative or connection residing in such county who are able and legally liable to maintain and support such person or persons.

Sec. 2. Any county commissioners upon his own knowledge, or upon satisfactory proof that there is within the county any persons entitled to the benefits of this act, shall, so long as the necessity therefor exists, provide at the expense of the county for the relief and support of such person.

Sec. 3. The several boards of county commissioners shall have power to purchase or procure any necessary quantity of land in their respective counties and receive a conveyance to their counties therefor, and erect or cause to be erected thereon a suitable hospital, or to purchase a suitable lot and building thereon, and fit the same up for a hospital, for the reception of persons entitled to the benefits of this act; *provided*, that such board of county commissioners shall in no case expend more than four thousand dollars of the county funds in the purchase of grounds and buildings, or erection of buildings.

Sec. 4. Whenever such hospital shall be built or purchased, the board of county commissioners may appoint a fit person to superintend such hospital and suitable medical attendance for persons therein, and to allow any pay on behalf of the county, reasonable compensation to such superintendent and medical attendant for services rendered therein, also to make all needful rules and orders for the government of such hospital and persons thereat; *provided* that pay to such medical and other attendants shall not exceed in any one year, the sum of five thousand dollars.

Sec 5. The several boards of county commissioners in this Territory, may draw the poor fund, and if necessary, on the general expenditure fund of their respective counties, for funds necessary to carry out the provisions of this act.

Sec. 6. This act shall take effect and be in force from and after its passage.

Approved, December 15, 1866.

CHOTEAU COUNTY.

CHAPTER XXX—*An act to authorize the Governor of the Territory to appoint an assessor and collector for the unorganized county of Choteau, under certain conditions.*

Be it enacted by the Legislative Assembly of the Territory of Montana as follows:

Section 1. That the Governor of the territory is hereby empowered, and requested to appoint and commission one suitable person as assessor, and one suitable person as collector, for the unorganized county of Choteau, whose duties shall be, to assess and collect all the taxes both real and

HeinOnline -- 1866 80 1866

personal in said county of Chouteau under the provisions of the revenue and license laws of the territory, and whose duties it shall be to report and pay over quarterly, all monies they may have received, to the territorial treasurer.

Sec. 2. Said asesssor and collector, shall, before entering upon the duties of their office, enter into and file sufficient bonds, with two or more sureties, with the auditor of the territory, payable to the people of Montana, to be approved by a probate or district judge, in the penal sum of ten thousand dollars each conditioned, for the true and faithful performance of their respective duties.

Sec. 3 The said assessor and collector shall be allowed the same compensation as are allowed for like services named in the general revenue act.

Sec. 4, This act shall take effect and be in force on and after April 1st, A. D. 1867, *provided* however, the said county of Choteau, has not completed an organization on or before April 1st, A. D. 1867.

Approved, December 14, 1866.

BRIDGES, MILLS, DAMS, ETC.

CHAPTER XXXI.—*An Act to protect Bridges, Mills, Dams, Flumes, Aqueducts, Reservoirs, &c.*

Be it enacted by the Legislative Assembly of the Territory of Montana, as follows

SECTION 1. Every person who shall wilfully and maliciously, cut, break, injure and destroy any bridge, mill dam, ditch, flume, aqueduct, reservoir, or other structure, erected to create hydraulic power, or to conduct water for mining, manufacturing or agricultural purposes, or any embankments necessary to the same, or either of them, or shall wilfully and maliciously make, or cause to be made, any aperture in such dam, ditch, flume, aqueduct, reservoir, embankment, or structure, with intent to injure, or destroy the same, shall, on conviction thereof be fined in any sum not more than one thousand dollars, or imprisonment at hard labor in the territorial prison not more than two years, or both such fine and imprisonment.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved, December, 14, 1866.

HeinOnline -- 1866 81 1866

RELIGIOUS INCORPORATIONS.

CHAPTER XXXII.—*An Act to invest Religious, Charitable and Educational Societies, with certain Powers of bodies Corporate.*

Be it enacted by the Legislative Assembly of the Territory of Montana, as follows:

SECTION. 1. It shall be lawful for all religious, charitable and educational societies, by such rules or methods as their rules, regulations or discipline may direct, to appoint or elect any number, not less than three nor more than ten, as trustees or directors, to take charge of the estate and property belonging thereto, and to transact all affairs relative to the temporalities thereof.

Sec. Upon the election or appointment of such directors or trustees, a certificate of such appointment or election, shall be executed by the person or persons making the appointment, stating the names of the trustees or directors, the name by which the said trustees or directors shall thereafter be called or known, shall be particularly mentioned and specified.

Sec. 3. Such certificate shall be acknowledged by the persons making the same, or proved by a subscribing witness thereto, before some officer authorized to take acknowledgments of deeds, and recorded together with the certificate of such acknowledgment or proof, by the clerk of the county, within which such religious, charitable or educational society is situated.

Sec. 4. Such trustees or directors may have a common seal and may alter the same at pleasure, they may take into their possession and custody all the temporalities of such corporations, whether the same shall consist of real or personal estate, and whether given, granted or devised, directly or indirectly, to such society or association, or to any person or persons for their use, they may sue and be sued, may recover and hold all the debts, demands, rights and privileges, all churches, burying places, halls, school houses, hospitals or other buildings, all the estates or appurtenances belonging to such association or society. They may have, lease, and improve the same, erect all the buildings that are necessary to carry out the object of the society or association, and perform all the duties imposed upon them, by the regulations, rules or discipline of such organization.

Sec. 5. It shall be lawful for any court of competent jurisdiction in the county in which any such corporation shall have been constituted, on the application of such incorporation, if such shall deem it proper to make an order for the sale of any estate belonging to such corporation, and to direct the monies arising therefrom, to such use as the said corporation, with the approbation of said court, shall conceive to be to the interest of such corporation.

Sec. 6 All lands, tenements and hereditaments that have been or may hereafter be lawfully conveyed by gift, devise, grant, purchase or otherwise, to any person as trustee in trust, for the use of any such society or association, shall descend with the improvements in perpetual succession to, and shall be held by such trustees, in trust for such society or associa-

HeinOnline -- 1866 82 1866

tion; *provided*, that the amount of real estate held by such society or association, shall not at any time exceed twenty-five thousand dollars.

Sec. 7. The trustees of any religious charitable or educational, society or association, or a majority of them, which have complied with the provisions of this act, shall have authority to exercise the powers hereby conferred upon such society or association, according to the ordinances discipline, or rules and regulations of such society or association, in respect to its temporalities.

Sec. 8. All real and personal property held by any such society or association, exclusively for its purposes, which has complied with the provisions of this act, shall be exempt from taxation to an amount not to exceed the sum of ten thousand dollars.

Sec. 9. This act shall take effect and be in force from and after its passage.

Approved, November 30, 1866.

TOWN OF MONTANA.

CHAPTER XXXIII—*An act to amend an act, entitled, an act to incorporate the Town of Montana, in Beaver Head County, Montana Territory.*

Be it enacted by the Legislative Assembly of the Territory of Montana, as follows:

Section 1. That section one be amended as follows: That the names of the following persons be added to the names of the corporators in said act: J. A. Brown, C. Bray C. S. Ream, A. K. Eaton, George Brown, David H. Hopkins, E. D. Leavitt, A. J. Smith, E. F. Phelps, B. S. Peabody and W. W. De Lacy.

Sec. 2. That the words "Montana city" be striken out whenever they occur in said act, and that the word "Argenta" be inserted therein.

Sec. 3. This act to take effect and be in force from and after its passage.

Approved, November 14, 1866.

DEER LODGE COUNTY.

CHAPTER XXXIV—*An act to repeal an act, entitled, an act to prevent pasturing stock on winter grass lands in Deer Lodge County, Montana Territory.*

Be it Enacted by the Legislative Assembly of the Territory of Montana as follows:

Section 1. That an act, entitled, an act to prevent pasturing stock on winter grass lands in Deer Lodge county, Montana Territory, approved, April 12, 1866, be, and the same is hereby repealed.

Sec. 2. This act to take effect, and be in force, from and after its passage.

Approved, November 14, 1866.

HeinOnline -- 1866 83 1866

NIGHT WATCHMEN OF HELENA.

CHAPTER XXXV.—*An Act to confer certain powers on Night Watchmen in the town of Helena, county of Edgerton.*

Be it enacted by the Legislative Assembly of the Territory of Montana, as follows:

SECTION 1. It shall be lawful and is hereby made the duty of the sheriff of Edgerton county to issue deputations to the parties herein specified.

SEC. 2. Whenever the residents of the town of Helena shall deem it proper to select one or more day or night watchmen, whose duty it shall be to preserve the peace, to prevent depredations on any private property and accidental fires, proper evidence of such selecture (provided, a majority of householders unite in such selection,) shall be given to the sheriff of said county, who shall thereupon issue his deputations to such person or persons so selected, describing him or them therein, and the limits of the locality or beat for which he or they may be selected as watchmen or policemen, and such deputation shall confer the same powers to such person or persons as are executed by policemen in cities, to detect crime and prevent breaches of the peace, and arrest parties guilty of such.

SEC. 3. It shall be lawful, and every person appointed by virtue of this act, for the purposes hereby intended, is invested with power to arrest persons engaged in or exciting to street brawls or fights, crimes or misdemeanors, indecent language in saloons and places of public resort at night, to pursue and arrest persons attempting to commit or having committed burglary, larceny or any other crime punishable by law, and for this purpose while on his beat and during the hours of his watch, he is hereby authorized to exercise the powers of policemen in cities and none other.

SEC. 4. Provided, That in no case shall he be entitled to demand fees or make any charge against the county of Edgerton.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved, December 14, 1866.

HeinOnline -- 1866 84 1866

RESOLUTIONS.

Joint Resolution---No 1.

Relative to the Commission Appointed to settle with the late Auditor and Treasurer of the Territory.

WHEREAS, At the second session of the Legislative Assembly of the Territory of Montana, a commission consisting of the following named persons: Andrew Leech, Wm. M. Stafford, John S. Rockfellow and John H. Ming, were appointed and empowered to make final settlement with John S. Lott and John J. Hull, late Auditor and Treasurer of Montana Territory. Therefore,

Resolved, By the House of the Legislative Assembly, the Council concurring, that the commission appointed and empowered by the second session of the Legislative Assembly of the Territory of Montana to settle with John S. Lott and John J. Hull, late Auditor and Treasurer of the Territory, be and they are hereby requested to report their action thereon, to both Houses, at their earliest convenience.

Approved, November 22, 1866.

Joint Resolution.—No. 2.

Resolved, By the House of Representatives, the Council concurring, that the Auditor of Montana Territory be, and is hereby empowered and required to audit and allow C. L. Craig the sum of two hundred and four dollars, and to E. S. Calhoun fifty dollars, for services as clerk at the 3d Session of the Legislative Assembly of this Territory, to be paid by the Territorial Treasurer out of any funds in the Territorial Treasury not otherwise appropriated.

Approved, Dec. 15, 1866.

HeinOnline -- 1866 85 1866

Joint Resolution.—No. 3.

Resolved, By the Council and House of Representatives, that the Auditor is hereby instructed to pay to the "Montana Radiator" the sum of forty dollars for publications of proclamations.

Approved, Dec. 15, 1865.

Joint Resolution---No. 4.

In Relation to the Distribution of the Laws.

Be it resolved by the Legislative Assembly of the Territory of Montana, as follows:

That the Secretary of the Territory be and he is hereby required to furnish all territorial and county officers, one copy each of all the laws passed at this the first session of the legislative assembly of this Territory; also to furnish the members of the Council and House of Representatives of the said assembly, and the chief clerk of each House, two copies each, of all laws and two copies each of the journals of both Houses of said assembly, also each assistant clerk, engrossing and enrolling clerk, sergeant-at-arms and doorkeeper of said assembly, with one copy each of all the laws and the journals of both Houses as soon as the same are published by him: *Provided*, That nothing herein contained shall be so construed by any officer of this Territory, as to bind the Territory of Montana for the payment of any printing during this session of the Legislative Assembly of this Territory.

Approved, December 14, 1865.

Joint Resolution.—No. 5.

Resolved, By the Council of the Legislative Assembly of the Territory of Montana, the House concurring, that the Territorial Auditor be and he is hereby authorized and required to draw his warrants upon the Territorial Treasurer as follows:

To Andrew Leech for four days services as commissioner to settle with John S. Lott, late Auditor of this Territory, as authorized by the last Legislative Assembly, the sum of forty dollars.

To Wm M. Stafford, for the same and like services, forty dollars.

To John S. Rockfellow, for the same and like services, forty dollars.

To John H. Ming, for the same and like services, forty dollars.

And the Territorial Treasurer is hereby authorized and required to pay such warrants in same and like manner as other cases.

Approved, Dec. 12, 1866.

HeinOnline -- 1866 86 1866

Joint Resolution---No. 6.

Resolved, By the Council, the House of the Legislative Assembly of the territory of Montana concurring, that the third session of the Legislative Assembly of the territory of Montana convened at the seat of government, on the fifth day of November, A. D. 1866, under the laws of this territory shall adjourn *sine die* on Saturday the fifteenth day of December, at four o'clock, P. M., of said day.

Approved, December 14, 1866.

Joint Resolution--No. 7.

For Payment of Freight on Books.

Resolved, By the Council of the Legislative Assembly of the Territory of Montana, the House concurring that the territorial auditor of this territory is authorized and required to audit a sum not to exceed five hundred dollars, in payment of any freight, or express charges on any books or library, belonging to this territory, and for any amount so audited he shall issue his warrant therefor which shall be paid, as required by law; *provided*, that the amount in no case shall exceed five hundred dollars.

Approved, December 13, 1866.

Joint Resolution.--No. 8.

Resolved, By the Council of the Legislative Assembly of the Territory of Montana the House concurring, that inasmuch as this Territory has not received an equal and just appropriation in lands and money usually appropriated to the Territories of the United States, and inasmuch as this Territory is suffering for the want of post routes and post offices, and suffering because of our wants not being sufficiently known at our national seat of government:

Therefore, We, the Representatives of the people of this Territory urgently request that his Excellency, Green Clay Smith, will repair to Washington on our behalf, applying at the seat of our national government, to the present Congress for the purpose of aiding and assisting in the acquirement of such appropriations and measures as will be beneficial to our beloved Territory from the mother Government.

Approved, Dec. 15, 1866.

HeinOnline -- 1866 87 1866

Joint Resolution—No. 9.

Asking Congress to amend the Organic Act, so as to increase the pay of the Federal Officers, as also the per diem of the Members of the Legislative assembly of Montana Territory.

WHEREAS, owing to the high prices of living in this Territory, the Governor, Secretary, and Judges of the Supreme Court, as also the members of the Legislative Assembly, cannot perform the functions of their offices, with the allowances at present provided, without being subject to many and divers deprivations. That their salaries and per diem, is scarcely sufficient to defray the actual expense of living, leaving no remuneration for their time; and

WHEREAS, at the second session of the Legislative Assembly of Montana Territory a joint resolution was passed requesting your honorable body to amend the Organic Act, as herein requested, but whether said resolution was ever presented to your honorable body, this body has no means of knowing; and

WHEREAS, it appears upon actual calculation, that the annual appropriation of twenty thousand dollars for Legislative expenses of Montana Territory, made and provided annually for such purposes, is sufficient of itself to admit of an increase of the per diem of members of the Legislative Assembly, from four ($4) to eight ($8 00) dollars per diem, without further appropriations on the part of Congress; and

WHEREAS, the U. S. Collector of Internal Revenue has collected of the people of this Territory (see Governor's message for the fiscal year ending June 30, 1866,) the sum of one hundred and fourteen thousand and twenty three dollars and fifty two cents, that our people are patient and law abiding, and lovers of the principles of Constitutional Liberty.

That while we remain in a Territorial condition and the Federal Government assumes to defray the expenses of our Territorial Government, and while our people continue to pay the taxes imposed upon them by the Federal laws, which are paid cheerfully, we shall deem it but a matter of justice to the people as well as to those whose duty it is made to execute, administer and make laws that the officers herein mentioned should receive such compensation as will enable them to maintain themselves as becomes the honor and dignity of their offices.

Be it therefore resolved by the Legislative Assembly of the Territory of Montana as follows:

That the Senate and House of Representatives of the United States of America in Congress assembled is hereby earnestly requested to amend the Organic Act of the Territory of Montana, so as to increase the salaries of the Governor, Secretary, and Judges of the Supreme Court of this Territory, to four thousand dollars per annum, and to increase the per diem of the members of the Legislative Assembly to ten dollars per diem, or such salaries and per diem as in the wisdom and justice of your honorable body may seem meet.

HeinOnline -- 1866 88 1866

That his Excellency, Green Clay Smith, Governor of the Territory of Montana, be, and he is hereby requested to forward a copy of this resolution to the Speaker of the House of Representatives, and President of the Senate, and also to forward a copy to our Delegate to Congress, Col. Samuel McLean, and request that he use all honorable means to secure such amendments as are herein set forth.

Approved, November 30, 1866.

HeinOnline -- 1866 89 1866

MEMORIALS.

Joint Memorial---No. 1.

Memorial to Congress, asking for the establishing of Post Routes and Post Offices in Montana Territory.

To the Honorable the Senate and House of Representatives of the United States of America, in Congress Assembled, and the Post Master General of the United States.

We, your memorialists, the Legislative Assembly of the Territory of Montana do respectfully represent to your honorable body that: The people of this territory pay their National taxes for the purpose of supporting the Government of the United States as punctually as other portions of the government: And, whereas, there are but few post offices in said territory several of the best and most fertile counties having none at all, the citizens thereof, having to depend entirely upon private expresses for their letters and papers, at exorbitant charges, costing annually many thousand dollars to the inhabitants of said territory. We, therefore, would earnestly appeal to Congress to establish a mail route from Virginia city via Sterling, Gallatin city, Nelson's crossing of the west Gallatin river, Fort Gallatin, to Bozeman city. The mail to be carried once a week, on horseback, and to establish post offices at the following places, viz:

Sterling, Madison county, and at Gallatin city, Nelson's crossing, Fort Gallatin, and Bozeman, in Gallatin county, since there is not a post office in the county of Gallatin, having a voting population of over six hundred and being one of the best grain growing counties in the territory, if not in the world.

We, your memorialists, would further represent to your honorable body that the county of Meagher is also without a post office, with a population but little short of any county in the territory, having a large area of tillable land and being one of the richest in mineral resources in the Territory.

HeinOnline -- 1866 90 1866

We, therefore, earnestly urge upon your honorable body the propriety of establishing a post office at Diamond city, as there has been a post route established from Helena to said point, also to establish a post route from Helena, in Edgerton county, to New York, in Meagher county, and a post office at said place, also, a post route from Deer Lodge city to Bear town, a distance of 7 miles, and a post office at said Bear town in Deer Lodge county, and at Elk creek, also, to establish post offices and post roads at such other places in this Territory as shall be just and proper, and your memorialists will, as in duty bound, ever feel grateful.

Approved, Deccember 15, 1866.

Joint Memorial—No. 2.

Memorial to Congress asking for Appropriations for Surveys and the Establishment of a Surveyor General's Office, and also for a Land Office in Montana Territory.

To the Honorable Senate and House of Representatives of the United States of America in Congress Assembled:

We, your Memorialists, the Legislative Assembly of the Territory of Montana, do respectfully represent to your honorable body, that,

Whereas, By treaties made between the United States and the various Indian tribes inhabiting Montana Territory, the Indian title to a large portion of the land in this Territory has been extinguished; and,

Whereas, Settlements have been made in the valleys of the Jefferson, Madison and Gallatin forks of the Missouri, upon the tributaries of the Missouri below the three forks, and also in the valleys of the Deer Lodge, Little Blackfoot, Hell Gate and Bitter Root rivers, which settlements comprise a farming population of over three thousand souls; and,

Whereas, The people of this Territory are anxious to have the land upon which they reside surveyed, in order that titles to the same can be acquired under the operation of the pre-emption and homestead laws of the United States.

Now, we, your Memorialists, would respectfully urge upon your honorable body the appropriation of money for the purpose of executing the public surveys through these mountain valleys and plains, at as early a date as possible, and would request that a Surveyor-General's office be established, and a Land Office be also created within the Territory.

Approved, December 4th, 1866.

HeinOnline -- 1866 91 1866

Joint Memorial—No. 3.

For an Appropriation to Re-open, Construct Bridges, and complete the National Road, known as the Mullan Road across the Bitter Root and Cœur d'Alene Mountains.

To the Honorable, the Senate and House of Representatives in Congress Assembled:

Your memorialists, the Legislative Assembly of the Territory of Montana, would most respectfully represent:

First—That the rapidly increasing population between the forty-sixth and forty-ninth degree of North latitude, and lying within the boundaries of this Territory; the rich developments of minerals and concentration of capital along this wide belt of country demands avenues which bring us within easy access of the great marts of commerce and trade.

Second—That the national road leading from Fort Benton to the navigable waters of the Columbia, through neglect, has become entirely impassable for wagons for a distance of two hundred miles, embracing all that portion from French Town, in Missoula county, across the Bitter Root and Cœur D'Alene Mountains in Idaho Territory. That the line of road surveyed and laid out by Lieut. Mullan, crosses in its ascent of the Bitter Root Mountains on the Eastern slope, the St. Regis Borgia river some forty-seven times, and that said road, in its ascent of the western slope of said mountains, crosses the Cœur D'Alene river some forty-two or forty-three times, and that the bridges, with but four exceptions, have been swept away, rendering these streams entirely impassable during the spring and early summer, at a time when our people are most in need of necessaries not attainable from the east at that early season of the year.

Third—That the trade between California, Oregon, and Idaho Territory, and our own Territory, is increasing rapidly, and can only be estimated by hundreds of tons, consisting of groceries, woolens, East India and Sandwich Island goods, flour and fruit from the rich valleys of Oregon, Washington and Idaho Territories, which are, at the present, only obtainable at a greatly enhanced price from the fact that access is difficult, and attended by severe hardships and great danger to life and property, entirely owing to the dilapidated and ruined condition of the said national road.

Fourth—That it has been estimated by competent engineers and others acquainted with the cost of constructing mountain roads, that not more than seventy-five thousand dollars ($75,000) would be required, if judiciously expended, to put said national wagon road or Mullan road in good condition for vehicles of any and all descriptions which would reduce the cost of freight at least fifty per cent., or from eight to twenty cents upon each pound which we are now obliged to have transported upon the backs of horses and mules.

HeinOnline -- 1866 92 1866

Fifth—In the opinion of your Memorialists, an appropriation of ($75,000) seventy-five thousand dollars, expended under the supervision of some resident interested in the welfare of our Territory, would be ample for the above purpose, and when the road shall be so opened, the enterprise of our people now settling along the whole line, would be sufficient to keep the same in good repair, without further assistance from the general government for all time to come. Thus we would have the most extensively traveled road across that range of Mountains conferring exceedingly great and permanent advantages upon our people as well of those of our sister Territories and States, stimulating commerce between the East and West, and practically uniting over this great national highway, the waters of the Atlantic with those of the Pacific. For the appropriation named in this memorial, to open this so much needed Great National Highway at an early period, we your memorialists, will, as in duty bound, ever pray.

Approved, December 13, 1866.

Joint Memorial---No. 4.

To the Honorable the Senate and House of Representatives of the United States, in Congress Assembled.

Your memorialists, the Legislative Assembly of the Territory of Montana, would most respectfully represent that while Congress has uniformly made appropriations for the erection of suitable capitol buildings for the several organized territories, not a dollar thus far, has been appropriated for Montana, for that purpose.

Your memorialists would further represent that the buildings occupied at this time, by the Legislative Assembly and the several federal officers of this Territory are rented of private individuals, and that they are temporary wooden tenements in every way unsuitable and unfit for the purposes for which they are occupied and very liable at all times to be destroyed by fire, together with all their valuable contents.

Your memorialists would further represent, that the Legislative, Executive and Judicial records, files, libraries, furniture and valuables of said Territory, are without suitable protection and liable to injury and total destruction, owing to the want of suitable buildings for their safe keeping.

Your memorialists would therefore pray, that you appropraite the sum of one hundred and fifty thousand dollars for the erection of public buildings at the place that now is or may hereafter be designated as the seat of government of said territory, and we, your memorialists, as in duty bound, will ever pray.

Approved, December 7, 1866.

HeinOnline -- 1866 93 1866

Joint Memorial—No. 9.

Joint Memorial asking Congress to amend the Organic Act so as to extend the jurisdiction of Justices of the Peace.

Whereas, By the Organic Act the jurisdiction of Justices of the Peace in this Territory is limited to sums not exceeding one hundred dollars, and,

Whereas, Owing to the peculiar nature of much of the property in a mining community, delays in determining the rights of parties thereto are particularly injurious; and

Whereas, Owing to the comparative high prices of most kinds of property in this Territory, many cases which in other States and Territories, would come within the jurisdiction of justices' courts, are here beyond such jurisdiction, therefore,

Be it resolved by the Council and House of Representatives of Montana Territory:

SEC. 1. That Congress is hereby earnestly requested to amend the Organic Act of this Territory, so as to allow justices of the peace jurisdiction in all sums not exceeding five hundred dollars.

SEC. 2. That his Excellency, Green Clay Smith, be respectfully requested to transmit copies of this Memorial to the Speaker of the House of Representatives and the President of the Senate, with the request that they be laid before their respective bodies, and that our delegate in Congress be respectfully requested to use his efforts to secure the passage of the amendments as asked for in Memorial.

A. E. MAYHEW,
Speaker of the House of Representatives.
CHAS. S. BAGG,
President of the Council.

Approved, Dec. 14, 1866.

GREEN CLAY SMITH,
Governor.

HeinOnline -- 1866 94 1866

AUTHENTICATION.

EXECUTIVE OFFICE,
Montana Territory.

I, THOMAS FRANCIS MEAGHER, Secretary and Acting Governor of Montana Territory, do hereby certify that the General Laws, Joint Resolutions and Memorials herewith published, are true and correct copies of the same now on file in my office and passed at the Third Session of the Legislative Assembly of Montana, begun and held at Virginia City, the Capital of said Territory, on the fifth day of November, in the year of our Lord, one thousand eight hundred and sixty-six,

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Territory of Montana.

{ L. S. }

Done at Virginia City, this 10th day of January, A. D., 1867.

THOMAS FRANCIS MEAGHER, *Secretary,*
And Acting Governor of Montana Territory.

HeinOnline -- 1866 95 1866

HeinOnline -- 1866 96 1866

INDEX TO GENERAL LAWS.

ARGENTA—To change the name of Montana City to PAGE 82
BRIDGES, Mills, Dams, Flumes, &c.—To protect 81
CAPITAL OF MONTANA, 78
Helena to be the seat of government when ratified by the voters, 78
CENSUS—To provide for the taking of, 72
CHOUTEAU COUNTY—To appoint an assessor and collector for, 80
Assessor and collector to give bonds, 81
Compensation, 81
CIVIL CASES—Proceedings in, 62
Property of defendant attached and issuing writ of attachment, 62
Plaintiff to give written undertaking and sufficient sureties, 63
Stock may be attached, 63
Sheriff's duties, 63
Unsatisfied executions, in case defendant recovers judgment, 65
Application for discharge of suit, attachment dissolved, 66
Plea in abatement, 67
Dismissal of attachment, appeals, 67
CONTRACTS, Bills of Exchange, Promissory Notes and Accounts, 57
Joint obligations and assumptions of co-partners, seal, 58
Value of bonds or notes payable in gold dust, 58
Notes signed by agents, 58
Acceptance must be in writing, 58
Acceptance not binding unless written on the bill, 58
Bills deemed to be accepted, 59
CORPORATIONS—Concerning, 3
Authorizing the formation of, 3
Companies may hold fourteen hundred and forty acres of land, 3
Corporations for agricultural purposes not to hold mineral lands, 3
Who may form companies and how companies may be formed, 3
Powers of corporated bodies and by whom exercised, 4
Persons holding stock as executors, administrators, guardians and trustees may represent the same and vote as stockholders, 5
Stock may be pledged, 5
Debts not to exceed the amount of capital stock paid in 6
No power to issue bills, notes, &c., for circulation as money, 6
Stockholders individualy liable for companies' liabilities, 6
False entries and penalties therefor, 7
Stock may be increased or diminished, 7
Dissolution, 8
COUNCIL AND REPRESENTATIVE DISTRICTS.
Apportionment of members, 50
Time of election for Council and number of members for each district, 50
Time of election for Representatives, and number of members for each district, 56
Who are entitled to certificates of election, and who shall compose the Fourth Legislature, 57
CRIMINALS—To perform labor, 52
County commissioners to enforce this act in their respective counties, 52
City councils or authorized city authorities to employ prisoners, 52
DEER LODGE COUNTY.—Repeal of an act to prevent pasturing stock on grass lands, 83
Regulating the probate court of, 70
ELECTIONS.—Repeal of section thirty-two of an act concerning elections, passed by first Legislative Assembly, 71
EXECUTORS AND ADMINISTRATORS, 70
When Executor or Administrator is non-resident of the county, 70
Attorney may appear in court, 70

HeinOnline -- 1866 97 1866

EXTRA COMPENSATION, PAGE 61
Members of the Legislature, 61
Clerks, Sergeants-at-arms, Doorkeepers, Pages and Firemen, 61
Additional clerks, 62
FUNDING LAW, 37
Warrants to be taken in and bonds issued, 38
Coupon bonds, 38
Bonds to be issued in multiples of fifty dollars, 38
Coupon bonds to be sealed and signed by Auditor and Treasurer, 38
Countersigned by Secretary and registered by Treasurer, 38
Faith of the Territory pledged, 38
Counterfeiting, 38
Money appropriated, 39
Interest to be paid annually in U. S. Currency, 39
Twenty-five per cent. of all moneys in treasury appropriated therefor 39
Bonds to be redeemed, 39
GALLATIN COUNTY—To establish county seat of, 77
GAMES—Prohibiting certain 49
Penalties, 50
Testimony, 50
Recovery of money lost, 51
Conflicting acts repealed, 51
HELENA CITY—To confer certain powers on night watchmen, 84
JEFFERSON COUNTY—Authorizing an election, 73
Changing and permanently locating county seat, 73
How election shall be held and determined, 73
JUDICIAL DISTRICTS, 45
Districts defined and judges assigned, 45
Terms of Supreme Court, 45
Terms of First Judicial District, 46
Terms of Second Judicial District, 46
Terms of Third Judicial District, 46
County of Vivion, 46
District Attorneys, 46
Trial of causes under the laws and Constitution of the United States, 46
Cases of vacancy, 46
Absence of judge at commencement of term, 47
Appointment of clerk, 47
Issuing of summons, 47
Acts of pretended terms null and void, 48
Jurisdiction of justices of the peace, 48
Docket fees, 48
When plaintiff advances docket fees, 48
Fees in cases of appeals, 48
Fees in criminal cases, court houses, clerk's offices, furniture, &c. 49
Repeal of conflicting acts, 49
JURORS—Payment of, security for costs, action of attachment, witnesses, unsuccessful party to pay costs and jury fee, when county shall pay costs, costs to be deposited with justice of the peace, 69
LICENSE LAW. 39
Billiard Tables, places of amusement, dance or hurdy gurdy houses, 39
Insurance companies, pawnbrokers, intelligence offices, assayers, professional men, livery stables, corrals, ranchmen, and stocks, 40
Buying, selling, or transporting gold dust, bullion or coin, 40
Public houses, 41
Spirituous liquors, pedlars, merchandize brought into the Territory, 42
Cattle, horses, mules, asses, sheep, or swine brought into the Territory, 42
Penalty for doing business without license, 43
Brewers, rectifiers, gambling and butchers, 43
Picture galleries, photographers, roads, bridges, ferries, etc., 43
Incorporated companies to make returns quarterly, 44
Manner of granting license, 44
Trial of criminal action, 45

HeinOnline -- 1866 98 1866

PAGE

LORD'S DAY—Better observance of, 67
MISSOULA COUNTY—To change the county seat of, 72
NOTARIES PUBLIC—In relation to 68
OFFICERS—To amend an act creating certain, 71
Failing to make reports required by law, to be prosecuted, and office declared vacant, 79
PENAL BONDS—Concerning, 74
Settlement while action is pending, 74
Sheriff to levy amount of damages, 74
Judgment to remain as security for further breaches, 75
Proceedings therein and execution thereon, 75
Suits in the name of the Territory, 75
POOR—for the support of the 79
Who are entitled to its benefits, 79
Duties of county commissioners, 80
RELIGIOUS AND CHARITABLE SOCIETIES—Incorporating, 82
REVENUE—To provide, and collecting the same for territorial purposes 9
For indigent sick fund and school fund, 9
How school moneys are to be appropriated, 9
Counties to be divided into districts. 9
Property to be attached for payment of taxes, 10
What constitutes real estate and personal property, 11
Bonds to be given, 12
When property shall be assessed and the manner of assessment 12
Assessor and sureties liable for taxes, 13
Owners to deliver a list of property in their possession, 13
Property taxed in county where situated, false lists and penalty therefor. books to be kept by assessor, 14
Form of assessment roll. 15
Cities or towns to be sub-divided, 16
Tax list to be completed by first Monday in October, 16
Board of equalization, 16
Tax receiver to apportion moneys received for taxes and make statement to county commissioners. 18
Penalty for neglect or refusal to make such statement, 19
Taxes may be paid at any time before institution of suit, 19
Personal property may be seized if party does not own real estate in the county, 19
When actions may be commenced and form of complaint, 21
Delinquent list shall be evidence of taxes due, 22
Duties of district or prosecuting attorneys, 22-23
When property may be redeemed, 23
POLL TAX—Who shall pay and the amount, 23
PASSENGER TAX—Who are taxed and the amount, 25
Penalty for refusing to give statement of number of passengers, 26
MINES—What mining property is taxed, manner of assessment, 28
Assessed and taxed in county where located, 30
Assessor to prepare quarterly assessment roll of proceeds of mines, 30
County treasurer to collect the taxes and the manner of collection, 32
Mines or mining claims may be attached for taxes, 34
District or prosecuting attorney to collect delinquent taxes, 35
Settlements of assessor, treasurer, ex-officio license collector, sheriff and district and prosecuting attorney, 37
VENUE—Change of, in civil actions, 53
In criminal cases, 54
Second change not allowed, 56
Conflicting acts repealed, 56
VIVION COUNTY, 77
WARRANTS—Prohibiting Territorial Auditor from issuing warrants except on certain conditions, 78
Penalty therefor, 78

HeinOnline -- 1866 99 1866

RESOLUTIONS.

RESOLUTION No. 1.—Relative to commission to settle with the late Auditor and Treasurer PAGE 85

No. 2.—To pay C. L. Craig and E. S. Calhoun, clerks, 85

No. 3.—To pay Montana Radiator, 86

No. 4.—Relative to distribution of the laws, 86

No. 5.—To pay commission to settle with the late Auditor and Treasurer, 86

No. 6.—Relative to adjournment, 87

No. 7.—Relative to payment of freight on books, 87

No. 8.—Requesting Gov. Green Clay Smith to repair to Washington, 87

No. 9.—Asking Congress to amend the Organic Act, increasing the pay of Federal officers and members of the Legislature, 88

MEMORIALS.

MEMORIAL No. 1.—In relation to post routes and post offices. 90

No. 2.—In relation to surveys and surveyor general's office, and land office, 91

No. 3.—In relation to the Mullen road, 92

No. 4.—In relation to capitol buildings, 93

No. 5.—Asking Congress to amend the Organic Act to extend the jurisdiction of justices of the peace, 94

HeinOnline -- 1866 100 1866